IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ART+COM INNOVATIONAL POOL, GmbH, Plaintiff,	Trial Volume 6
v.	C.A. No. 14-217-RGA
GOOGLE INCORPORATED, Defendant.	

Friday, May 27, 2016
8:35 a.m.
Courtroom 6A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE TIMOTHY B. DYK,
United States District Court Judge

APPEARANCES:

FARNAN LLP
BY: BRIAN E. FARNAN, ESQ.
BY: MICHAEL J. FARNAN, ESQ.

-and-

BAKER & BOTTS
BY: SCOTT F. PARTRIDGE, ESQ.
BY: MICHAEL A. HAWES, ESQ.
BY: LARRY G. SPEARS, ESQ.
BY: TIMOTHY ROONEY, ESQ.

Counsel for the Plaintiff

APPEARANCES CONTINUED:

MORRIS, NICHOLS, ARSHT & TUNNELL
BY: JACK B. BLUMENFELD, ESQ.

-and-

O'MELVENY MYERS, LLP
BY: DARIN SNYDER, ESQ.
BY: LUANN L. SIMMONS, ESQ.
BY: BRETT WILLIAMSON, ESQ.

Counsel for the Defendants

THE COURT: Be seated, please.

For the record, counsel and the Court met for an informal charge conference yesterday afternoon which was very productive. And the parties sent me this morning a joint proposed draft of final jury instructions with the three remaining issues to be resolved and this is your opportunity to make formal objections as required by Rule 51 as to the jury instructions.

Now, two objections don't need to be made. To the extent that you reserve objections to the Court's claim constructions, those don't need to be raised here this morning. Those are preserved. And I understand that ACI has objected to the 2005 hypothetical negotiation date arguing instead for a 2010 date it. That objection is preserved and need not be repeated this morning.

And turning to the proposed write up the parties sent me last night, of the final jury instructions, I think there are two things which I need to rule on here. One of them is on Page 25 and we'll make a copy of this and attach it to the transcript as Court's Exhibit B.

There was a Google proposal and an ACI proposal on this page and here's what I propose to do, is to have two sentences which would be, the evidence concerning Google's revenues or financial projections from after 2006 is not material to and cannot be considered for the purpose of determining the royalty rate. ACI's financial proposals after 2006 may be given less weight for determining a reasonable royalty period.

Now, is there any objection to that resolution?

MR. PARTRIDGE: Yes, Your Honor. Our objection is to the inclusion of the -- of these sentences at all, which I think was discussed previously. We think that the inclusion here of a suggestion of less weight is not appropriate. We also don't agree that the date should be after 2006. Your Honor's already ruled the hypothetical negotiation date is in July of 2005. I don't think we should be making distinctions between 2006 versus any other years. If we're going to have an instruction like this, it ought to be pegged to the

hypothetical negotiation date as we've suggested. So those are the two remaining problems we have. Well, I guess three, we don't think it's required at all. Two, we don't think that the date should be July of 2006 and we think that less weight is not an appropriate instruction. That's our view of this, Your Honor.

THE COURT: Okay. Google.

MS. SIMMONS: Good morning, Your Honor. Google does not object to the first sentence that Your Honor proposed to the instruction. As to the second sentence regarding the ACI financial proposals, Google objects to that instruction on the basis that the ACI financial proposals after 2006 should be given no weight as opposed to less weight. The hypothetical negotiation has been set by Your Honor as 2005. Information concerning in particular an e-mail from November of 2010 is five years after the date, and therefore should not be considered for the purpose of determining a royalty rate. In addition the 2010 e-mail was offered by Mr. Mayer, who testified at the trial

that he has no experience with licensing and that the e-mail related to a typical licensing model and Mr. Mayer admitted that Google Earth was not a typical product. Therefore Google objects on the basis that admitting the e-mail for any purpose and determining a royalty rate would be highly prejudicial and is not relevant to the proper determination of damages.

THE COURT: Okay. Well, seems as though I've made both parties unhappy, so maybe I'm about right. I'm going to overrule both of those objections.

And then the one remaining issue is on Page 30 here and you've given me competing proposals. I'm going to adopt the Google proposal, so the first sentence would read -- I mean, I'm sorry, not the Google proposal, the ACI proposal. So that the first sentence would read, ACI seeks to recover damages reflecting the alleged value that Google Earth contributes to Google's profitability.

Does Google object to that?

MS. SIMMONS: Yes, Your Honor. Google objects to that proposal or that

instruction on the basis that there's been no evidence or expert testimony that Google Earth contributes to Google's profitability. In fact, there's been no evidence regarding what Google's profitability actually is. The jurors will be left to speculate as to that profitability based on general knowledge about Google as a company. Therefore we believe it's an improper instruction regarding the proper determination of damages and would be highly prejudicial to Google.

THE COURT: Okay. That objection is overruled.

MR. PARTRIDGE: Your Honor, if I may with respect to this?

THE COURT: Yeah.

MR. PARTRIDGE: To preserve our record as discussed previously. We object to the repeated references to revenue in this instruction given that the products that are at issue are free, largely free products. So we have an overall objection to this instruction on that basis. We appreciate Your Honor's, I think, from our standpoint, improvement of the

instruction with the decision this morning. And we do have one other objection that didn't get into the red line late last night at midnight.

THE COURT: Well, hold on a moment. I thought that the proposal that you were -- the joint proposal I had from the parties was a proposal that everything was agreed with the exception of these items which you listed as the disagreements. You're now telling me that this agreement goes beyond things that were noted in the draft?

MR. PARTRIDGE: I'm just saying, Your Honor, with respect to this instruction, I think as we've discussed previously the repeated references to revenue in this situation we're objecting to. We accept the Court's decision to go with this instruction and so we made a proposal to fix one part of it, but we do have an objection to the instruction overall.

THE COURT: I think if you had an objection to the rest of the instruction you should have noted it in this draft if that was the purpose of the draft. But to the extent that you're making objection that goes beyond

the draft, then in this respect it's overruled.

MR. PARTRIDGE: Understood, Your Honor. And the one error that was made, if I may, concerns instruction 13. And as previously -- I'll wait until you get there, Your Honor. This concerns whether or not a public use must be informed and we had requested the insertion of a sentence along the lines of if members of the public are not informed of and cannot readily discern the plain features of the invention in the alleged system, the public use has not been put in possession of those features and we cite to Day versus Synovium and other Federal Circuit cases to support that additional sentence being added to that instruction.

THE COURT: I agreed that that objection was preserved and I think that's not consistent with the Supreme Courts decision in Egbert and the way its been construed in later Federal Circuit cases, so I'm going to overrule that objection and I'll probably, at some later time, have a written order about that.

MR. PARTRIDGE: Very well, Your Honor. Thank you.

THE COURT: So I understand that now with the exception of the things that have been formally raised here today and the claim construction objections that were preserved and the objections of the 2005 hypothetical negotiation date, there is no other objection to these instructions; is that correct?

MR. PARTRIDGE: That is correct from plaintiff's standpoint, Your Honor.

MS. SIMMONS: Your Honor, no further objections from Google.

One small point of clarification stemming from Your Honor's instruction that all parties preserve their claim construction positions, that extends to the instruction that indicates that Google does not dispute that certain claim limitations are met, that is based on the current claim constructions.

THE COURT: Right. You're preserving your objections to the claim constructions, and by agreeing in the final jury instructions that Google satisfies particular limitations, you are not giving up your objection to the claim construction.

MS. SIMMONS: Yes, Your Honor. Thank you for that clarification.

THE COURT: Now, that brings us to the verdict form. And I propose to work from the ACI verdict form which you sent me this morning. And again, for clarity, I suggest I'll mark this as Court Exhibit C.

Obviously ACI proposed these. I'm inclined to accept ACI's proposal to have separate questions on anticipation and obviousness. It does make the verdict form a bit confusing, but nonetheless I understand why they would want to do that.

I do think a couple of changes need to be made in the ACI proposed form. If you look at question three, I think that referring to the TerraVision system anticipates without more could be confusing to the jury, so I think there should be a parenthetical there that it constitutes a prior public use of. Is there any objection to that change?

MR. PARTRIDGE: No, Your Honor.

MS. SIMMONS: Not to that change, Your Honor.

THE COURT: And then in question four, I don't think the jury should be asked to answer the obviousness question if it's already found anticipation because I think that will be confusing to them. So I propose to modify the introduction to question four to say if you have answered yes to question two and no to question three, you find that Google has proven.

Is there any objection to that change?

MR. PARTRIDGE: My only concern about -- my concern, Your Honor, is not having a resolution of that issue for potential appeal purposes. I'm just thinking through -- I mean, if they answer that it anticipates, I see your problem, I think I understand what you're saying, if they say it anticipates, under the law it is not necessarily obvious.

THE COURT: It's very confusing to them if you tell them to go on and decide the obviousness question.

MR. PARTRIDGE: I see your point. I think that is an appropriate addition to that question.

THE COURT: Does Google have any objection to that?

MS. SIMMONS: No, Your Honor.

THE COURT: And then in question seven, same change, if you answered yes to question five and no to question six, so again, they're not asked to go on and decide the obviousness question with respect to claims 1, 14 and 28 if they have already found them anticipated. Is there any objection to that change?

MR. PARTRIDGE: No, Your Honor.

MS. SIMMONS: No, Your Honor.

THE COURT: And with those changes, is there any objection to the verdict form?

MR. HAWES: Your Honor, you might want to do the same with question number eight as you did with question number seven.

THE COURT: No, I don't think so, because with respect to question eight there is no anticipation -- with respect to claim 3 there is no anticipation question.

MR. HAWES: I'm sorry, Your Honor.

You're correct. Yes.

MR. PARTRIDGE: To answer your question, Your Honor, no objection to the changes made.

MS. SIMMONS: Your Honor, just for purposes of preserving the record, Google objects to splitting the question out into two as we believe it will be prejudicial to Google and confusing to the jury.

THE COURT: Why prejudicial?

MS. SIMMONS: Because it ends up with one question for infringement and I believe it ends up being eight questions for invalidity. And the concern is that the jury will have more work to do on the invalidity case and that could negatively impact their resolution of the issues for Google.

THE COURT: That's overruled.

MS. SIMMONS: Thank you.

THE COURT: When I gave you the draft last night, I put it in large type so I could read it. You have shrunk the type. What I'm going to ask my clerk to do is to make the changes that I made this morning and print out a

large type version which would be the one that I would read to the jury. And also it would be the same one that the jury would take back with it for its deliberations. And I'll ask them to make the changes that we talked about this morning to the verdict form, also.

Do you need time to make those changes or have those been done already?

What I'm going to do is I'm going to give each of you a copy of the new verdict form with the changes that we just talked about, and the final jury instructions with the changes we talked about at recess for ten minutes or something, give you a chance to make sure that there isn't some glitch in here. And then we'll call the jury back and I'll give the jury instructions.

MR. PARTRIDGE: One point of information for you, Your Honor. There have been I believe some outstanding objections to closing slides, demonstratives that we need to discuss with you at some point before the jury comes in as well.

THE COURT: How long is that going

to take?

MR. ALMELING: Not very long at all. Less than five minutes.

THE COURT: Can we sort of double track this? Can someone check the verdict form and final jury instructions while we're considering the objections?

MR. PARTRIDGE: Yes, Your Honor.

MR. ALMELING: Yes, Your Honor.

THE COURT: So hold on for a moment on the objections. I'm going to ask my clerk to pass out the revised verdict form and the jury instructions and let's call the verdict form Court Exhibit D and the final revised jury instructions as Exhibit E. And I think we have two copies for each side. And come back and let us know if there is any glitch in here that needs to be corrected. Okay.

MR. ALMELING: Thank you, Your Honor. Google has two concerns with plaintiff's opening. Instead of discussing this in abstract, it would be useful to show the slides if that would be helpful to Your Honor.

THE COURT: Please.

MR. ALMELING: The first issue relates to a series of slides beginning at slide five. This is the issue of ACI's improper suggestion of copying which has been addressed partly by this trial so far, but I wanted to lay this out in the closing as it's being done.

Slide five itself is not objectionable, it refers to who was at SGI in 1995.

Next slide.

Then there's a plan to show this, which shows Mr. Mayer giving a demonstration of the T_VisionVision system. This was not given to SGI in 1995 and during the meet and confer process ACI has agreed to remove the title to avoid that suggestion, but it's still in the slide and in that order.

Next slide. Then ACI plans to suggest that these people that were at ACI and presumably saw a demonstration or at least part of a demonstration, next slide, moved to Intrinsic Graphic and ostensibly took with them whatever they learned at SGI including their knowledge of the demonstration, next slide, then

to Keyhole. Next slide, and that cumulative information is now funneled into Google.

During opening presentation, a similar series of slides was presented purportedly to suggest the context of the parties' negotiations to aid the jury. That context is no longer necessary, because the jury understands the connections between the parties and the only use of this is therefore for the improper suggestion that they learned of the demonstration, took what they learned through a series of companies and then brought into Google, i.e., the copying issue.

THE COURT: Could you go back one slide?

MR. ALMELING: Yes, Your Honor.

THE COURT: Or maybe one other one. That's one that has an X on it. What's that at the bottom?

MR. ALMELING: I believe that is an X through the Intrinsic. I'm not sure why the X is there.

MR. HAWES: May I comment, Your Honor.

THE COURT: Yeah.

MR. HAWES: We actually agreed to get rid of these slides because Mr. Birch was not in our opening slides, so we've gotten rid of the slides. All we plan to do is use the slides we used in our opening so the jury knows we're talking about the same things we talked about before. We now have an instruction specifically on the copying issue and not going to show anything we didn't show in opening on this issue.

MR. ALMELING: The objection is the even though the word copying is not used, this is meant to portray copying which is no longer necessary for context.

THE COURT: I'm going to overrule that and if they start suggesting copying, you can rebut it and I may emphasize to the jury that there is no issue of copying, so do stay away from that, please.

MR. ALMELING: Thank you, Your Honor. The second issue Google would like to raise relates to Slide 54.

MS. SIMMONS: Your Honor, this

slide we understand from the meet and confer is based on PTX-219, which is a document that talks about AdSense revenue, that was admitted during Mr. Nawrocki's direct. Google object and the Court overruled. At that time we object to this slide as being based on a document dated from 2010 and related to revenues from AdSense. First of all, it's five years after the hypothetical negotiation date and there's no expert opinion or testimony that would link AdSense revenue back to Google Earth or somehow evidence that Google Earth contributed to any AdSense revenues. And the figures obviously are large and our concern is that this is prejudicial and is being used for an improper purpose.

THE COURT: Okay.

MR. HAWES: Your Honor, may I actually pass up that document?

THE COURT: Yes.

MR. HAWES: So I'd start, Your Honor, by just pointing out that as you can see from the slide, there are no revenues numbers or projection numbers here. This is an

apportionment issue. More importantly, if Your Honor could turn to Page 2, it's a double-sided document, if you look at the second full paragraph there, Your Honor, and look at the last sentence, you'll see this document is specifically talking about an apportionment breakdown that was effective in 2005.

THE COURT: Well, what's the Google comment on that?

MS. SIMMONS: The main concern, Your Honor, that as to any date, 2010 or 2005, there is nothing in this document, nor is there any expert testimony that links any AdSense revenue to Google Earth. That's not in this document, not in the paragraph that counsel just pointed out.

THE COURT: Well, help me understand what AdSense revenue is.

MS. SIMMONS: Revenue from the ad program for Google Earth that's used as we heard from testimony, not in Google Earth. It's used in other Google products, and there's been no expert testimony that says Google Earth generates any of the AdSense revenue.

THE COURT: The AdSense revenue is all of Google's advertising revenue for all platforms?

MS. SIMMONS: I'm not sure it's all platforms, but I am certain it's not for Google Earth.

THE COURT: What is it, Mr. Hawes

MR. HAWES: Your Honor, we are not using this at all for revenue. This is a program that Google has where it splits the value that Google adds and the value that the customer receives and the expert testified that this was the basis for determining an apportionment to give Google credit for it's ad program. We are not going to talk about any revenue numbers.

THE COURT: I'm sorry, I'm not following what's going on here. And it's hard for me to rule on it if I don't understand what's going on.

MR. HAWES: Fair enough, Your Honor. So the AdSense program is a partnership program where third parties can work with Google to have ads on their website. So if I had my

own web --

THE COURT: On Google website?

MR. HAWES: No, actually on mine. So I'm a third party and Google provides me with software that allows me to show ads on my website, but through Google's system. So it's on my website but it goes through Google's advertising them.

THE COURT: Okay.

MR. HAWES: And there's a share, I'm not going to talk about the revenue numbers, but there's a share that has been effective since 2005 for how Google says here's your portion of that, and here's our portion because of our advertising platform.

THE COURT: What does that have to do with the issues in this case?

MR. HAWES: It has to do with the share that Google itself attributes to the value its advertising platform provides. And that's what Mr. Nawrocki testified as an expert, that this helps him apportion because it shows what Google believes its advertising platform is worth as a share of revenue its providing. So

it's an important apportionment point that was testified to by the expert and as the document indicates was dated back to 2005.

THE COURT: What is the 49/51 percent share going to be attributed to?

MR. HAWES: It's going to be attributed to the various numbers we've seen that the jury may use in calculating its royalty. We're going to say Google should get credit for the percentage that Google itself has determined is appropriate when you're using the Google.

THE COURT: Are you suggesting that Google Earth is responsible for 51 percent of Google's total revenue?

MR. HAWES: No, Your Honor. This is one step in I believe four steps of apportionment that Mr. Nawrocki used. I mean, this is certainly not a single step. And again, we're not going to talk about their total revenue or any revenues numbers, but there are four steps of apportionment that are important for the jury to hear because apportionment is required by the jury instructions.

THE COURT: Why is this 49/51 percent apportionment from AdSense, what are you arguing it can be used for?

MR. HAWES: It can be used by the jury to adjust the rate to take into account the apportionment that Google's advertising platform deserves by Google's own program that shows how much Google attributes to its advertising platform as a percentage.

THE COURT: Ms. Simmons.

MS. SIMMONS: Your Honor, first of all, Mr. Nawrocki talked about this document but gave no opinion -- or not this document, I'm sorry, the underlying document, but gave no opinion as to how it should be used and second and more important, as Your Honor, has indicated, if you read PTX-219, and we can pull it up if that's helpful, I believe counsel gave you a copy. If you read through this documents it relates to ads that publishers can put on their own site and generate revenues from those ads. It has absolutely nothing to do with Google Earth and there has been no testimony or evidence that it does.

THE COURT: Is there any testimony Mr. Hawes?

MR. HAWES: Yes, Your Honor, there is. Mr. Nawrocki testified that this was an apportionment step that the jury could use to determine a reasonable royalty. Your Honor --

THE COURT: Did he say something about the AdSense document?

MR. HAWES: Yes, he did, Your Honor.

THE COURT: Did he say something about the AdSense document?

MR. HAWES: Yes, he did. He said yes, our AdSense so we paid our AdSense for search partners at 50 percent revenue per share, that means if you do those activities its partners would receive 51 percent, Google would have a 49 percent, so roughly a split. That's how he described his apportioning step based on how he analyzed the underlying document. That's all we're asking to show the jury exactly what he testified. I'm not going to show them the document, I'm not going to show them anything in the document other than what he testified about.

THE COURT: I'm going to sustain the objection. I think the way you're using this could well confuse the jury and suggest that this apportionment that's made in an entirely different context somehow is between Google and its third-party partners is somehow a proper apportionment with respect to Google Earth and other Google products, and it seems to me it's quite remote from that.

MR. HAWES: I understand your ruling, Your Honor.

MS. SIMMONS: Thank you, Your Honor.

MR. SNYDER: Your Honor, there are two other issues that are closely related to what we have just discussed. The first relates to an exhibit that is admitted. This is Plaintiff's Exhibit 160. It is an SEC filing from 2011, I believe, and it was admitted without any redaction.

Now, like any SEC filing it includes an enormous amount of information about Google, the entire Google company including all of its revenues and profits. It was referenced

by Mr. Nawrocki for one purpose, and that was to identify generically the difference, the amount of Google worldwide revenues that he attributes to the United States.

But it would be enormously prejudicial for plaintiff's counsel or for one of the jurors to look at that document and identify the very kind of information that is prohibited to show the jury about the company's total revenues when there is no connection to any of the issues in this case.

THE COURT: Is there any reason, Mr. Hawes that the document can't be redacted?

MR. HAWES: I thought we had agreed to a redaction. I'm not sure what the issue was.

MR. SNYDER: I wasn't aware there was a response.

MR. HAWES: I'm sorry, we talked yesterday. We had agreed to a redaction based on a document they had submitted.

MR. SNYDER: That resolves the issue and we'll submit the redacted version.

There is a related issue to that,

Your Honor. I am very concerned and I am more concerned after this morning's conversation that what plaintiff intends to do is to take their $7.1 billion session number and put some gigantic proposed damages in front of the jury when there is nothing to support that.

Mr. Nawrocki did not give a damages opinion. He identified the number of sessions and never gave an opinion about the rate. He never gave an opinion about a proposed reasonable royalty in his view. If they want to identify a number of sessions, that's one thing, but now what I fear they are going to do is take that 2010 document that we objected to and some suggestion of a ten cent per use rate, and put a number of $700 million in front of the jury. And there is no basis for doing that given the Court's rulings and given the evidence that's been put forth in this case.

MR. HAWES: Your Honor, I am not going to ask the jury for a $700 million damage award.

THE COURT: What are you going to do with the ten cent figure?

MR. HAWES: All right. So you're asking me for my closing, Your Honor?

THE COURT: Well, that's the issue that's raised here.

MR. HAWES: And I answered the issue, I'm not going to ask for $700 million. Yes, we're going to say that there is a typical royalty rate that was put in that e-mail that was admitted into evidence, we are going to discuss various of the credit factors that Mr. Nawrocki set forward, one less now, but various of the factors that Mr. Nawrocki set forward for giving credit to Google and we are going to ask the jury to consider the evidence in view of the royalty instructions that they have received and let them know that there are various options that they have for reaching a reasonable royalty in this case in accordance with the instructions.

I do not intend to put a $700 million number or any number higher than the number we originally had in this case as a result of the ten cent in front of the jury.

THE COURT: I'm going to let you

-- this does seem to raise potential Rule 50 motion if you're successful here as to whether there is sufficient evidence to support some of these calculations, but I think I can't rule on that in connection with to the closing argument.

MR. HAWES: Thank you, Your Honor.

MR. SNYDER: May I make one more comment to try to put this in context?

Your Honor just ruled that a portion of the apportionment scheme that they wanted to use, the 49 to 51 percent, they cannot use. I agree with that ruling and we all understand that.

THE COURT: No, I didn't say they couldn't argue for a 49 and 51 percent division, I just said that they can't rely on this document, the AdSense document because it's too far afield and it's not relevant to making that calculation.

MR. SNYDER: Thank you, for the clarification, Your Honor. There is no evidence for an apportionment of the -- that is the only evidence that Mr. Nawrocki relied on. And there is no other evidence on that issue. If we

pulled -- we know how this works. And if they pull that piece out of the formula, one for which there is no support, then the net effect of that mathematically is it's going to double the amount of damages that they're going to ask for.

By taking a piece out, the net effect is they're going to ask for more money which is more prejudicial, not less prejudicial, when the reason for removing it is that it is irrelevant.

THE COURT: You're going to argue there is no support for it. At the end of the day if there is a Rule 50 motion necessitated here, we can have briefing on whether there is any support in the record for this. Mr. Hawes runs the risk of that happening. But I'm going to let the argument be made within the confines of what we just discussed.

MR. SNYDER: Thank you, Your Honor.

MR. HAWES: Thank you, Your Honor.

THE COURT: Is there anything else?

MR. PARTRIDGE: Nothing from the plaintiff, Your Honor.

MR. SNYDER: Nothing further, Your Honor.

THE COURT: All right. Are we ready to bring the jury back in for the closing argument?

MR. PARTRIDGE: One --

THE COURT: Yes, we need to determine whether your review of the verdict form and final jury instructions showed any need for a change.

MR. PARTRIDGE: It's okay with us, Your Honor. I would request you would give us a couple of minutes to adjust the slides in light of Your Honor's ruling.

THE COURT: We'll do that.

MR. WILLIAMSON: I apologize, Your Honor. I realized there is a housekeeping issue. I have already addressed it with plaintiff's counsel. Some of the exhibits and there is one we have identified so far that were not objected to in the pretrial order and that were used with witnesses were not listed in some

of those post witness rollcall and the only one we have identified now is the file history from plaintiff's exhibit, it's PTX 5. There may be others, we agreed if plaintiff identified those, we won't object. I just move that into evidence.

MR. PARTRIDGE: No objection, Your Honor.

THE COURT: It's admitted.

And now Mr. Snyder, you have had a chance to review the final jury instructions and verdict form?

MR. SNYDER: We have, Your Honor. And you conformed to the Court's rulings. We have no further issues for them.

THE COURT: We'll wait a couple of minutes to let you get set.

MR. HAWES: Can I ask for a clarification, Your Honor?

THE COURT: Yes.

MR. HAWES: On your ruling with regard to the AdSense, are you excluding the demonstrative slide? We're trying to fix closing right now, Your Honor. Are you

excluding the demonstrative slide or are you excluding the article that was previously admitted into evidence?

THE COURT: The article being PTX 0219?

MR. HAWES: Yes, 0219, that's right, Your Honor.

THE COURT: Yes, I think this document should be not only excluded as a demonstrative, but based on further argument stricken to the extent that it was admitted earlier. I think it's too speculative, too confusing. It raises a very serious 402 problem, very marginal reference and significantly prejudicial.

MR. HAWES: Your Honor, are you also striking the witness's testimony with regard to Exhibit 219, the expert witness?

THE COURT: Yes.

MR. HAWES: I understand your ruling. Thank you, Your Honor. And just for the record, we do object to those being stricken, but I understand your ruling.

THE COURT: Thank you.

Just one other matter before you bring in the jury. Now that I've stricken PTX 0219 and the testimony with respect to that, is there a need to inform the jury of that?

MR. SNYDER: I think it would be appropriate to inform them, Your Honor, that they have been taking notes. We have no idea what portion of it is going to be relevant to their determinations or not. And I don't know how that issue is going to be handled at closing.

THE COURT: It's not going to be handled at closing, but is there a need to inform the jury about that?

MR. HAWES: Your Honor, we don't believe so. It shouldn't go back, obviously, because you have excluded it so it wouldn't be something the jury would have access to or consider. We believe it would be prejudicial to have the jury come in during closing and tell them we're striking some of the plaintiff's witness's testimony. This decision was potentially made while the witness was on the stand, but instead now we're here in closing and

the question is whether to tell the jury as closing starts or even right after closing, I'm striking a plaintiff's witness's testimony.

THE COURT: I'm inclined to agree. It gives it too much emphasis. The exhibit won't be available to the jury. There is not going to be any reference to the testimony about it. So I think to avoid further jury confusion about that, I'm not going to mention it.

MR. SNYDER: I understand, Your Honor.

MR. HAWES: I understand, Your Honor.

THE COURT: All right. Are we ready to bring the jury back?

MR. HAWES: The plaintiff is ready, Your Honor.

MR. SNYDER: Yes, Your Honor.

(Jury entering the courtroom at 9:14 a.m.)

THE COURT: Good morning, members of the jury. Thank you for your patience here. Sorry to keep you waiting. Now comes the time for the final stages of this case. I'm going to

give you final jury instructions and I'm going to give you a verdict form which you should fill out in your deliberations and then there will be closing argument by each side and then you will recess to deliberate. Unfortunately the final jury instructions are somewhat lengthy, probably going to take on the order of 45 minutes or maybe even longer than that, so I ask you to bear with me and to pay attention carefully because these instructions must govern your deliberations.

Now, members of the jury, you have heard the evidence in this case and I'm going to instruct you now on the law you must apply. And a copy of these instructions will be available to you during your deliberations. It's your duty to follow the law as I describe it to you. On the other hand, you, members of the jury, are the judges of the fact or the facts and don't consider any statement that I have made during the trial or in these instructions as an indication that I have a view about the facts of the case.

After I instruct you on the law,

the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist you in understanding the evidence and the parties' contentions.

As I mentioned, a verdict form has be prepared for you. You will take this form into the jury room and when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill it in, date it and sign it. Answer each question on the verdict form in order based on the facts as you find them. Your answers and your verdict must be unanimous.

In determining whether any fact as be proven in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them. You may also consider the parties' factual stipulations. You have heard testimony and viewed exhibits about some very technological

issues. The evidence at times may have been difficult for non-experts such as yourself to comprehend. In deliberating on a verdict, do not be discouraged and do your best to understand the testimony and exhibits that have been presented to you. I think these instructions and the closing arguments will help you to understand the relevant issues and I have great faith in your ability to reach a fair and impartial verdict.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel is justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been establish by the testimony and evidence in this case. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all other evidence you believe that single witness.

Now, certain testimony as you recall, has be presented through a deposition. As I mentioned at the outset of the trial, a deposition is the sworn, recorded answers to questions asked of a witness before trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, the witness testimony may be presented, under oath, in the form of a deposition. The deposition testimony is entitled to the same consideration as live witness testimony, and it is to be judged by you as to credibility and weight and otherwise considered by you insofar as possible and treated the same as if the witness has been present and had testified from the witness stand in court.

You have heard comments and questions from both sides concerning potential witnesses who were not called to testify in this trial. You should be aware that I have strictly limited the amount of time available to each side to present testimony, so that we could conclude within the week and it was not possible for the parties to call all witnesses who may

have relevant knowledge.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness did or said something or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

You should keep in mind of course that a simple mistake by a witness does not necessarily mean the witness was not telling the truth as he remembers it, because people forget some things and remember other things inaccurately. So if a witness has made a misstatement, you need to consider whether the misstatement was an intentional falsehood or simply an innocent lapse of memory and the significance of that may depend on whether it has to do with an important factor an unimportant detail. Now, a witness may also be discredited or impeached by contradictory evidence such as testimony of other witnesses or

written documents received in evidence or evidence that at some other time the witness said or did something, or failed to say or do something that was different from the testimony he or she gave at trial. If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, as you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony, and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

Certain exhibits shown to you are illustrations. We call these types of exhibits demonstrative exhibits. Demonstrative exhibits are a party's description, picture or model to describe something involved from in this trial. If your recollection of the evidence differs from the demonstrative exhibit, rely on your recollection. Both parties have presented testimony of expert witnesses. When /-PBL of technical subject matter may be helpful to the

jury, a person who has special training or experience in that technical field, called an expert witness, is permitted to state his or her opinion on those technical matters. However, you're not required to accept that opinion of the expert. As with other witnesses, it is up to you to decide whether to rely upon it. In deciding whether to accept or rely upon the opinion of an expert, you may consider any bias of the witness, including any bias you may infer from evidence that the expert witness has been will be paid for reviewing the case and testifying, and whether the expert supported his opinion with sufficient evidence.

Now, by allowing testimony or other evidence to be introduced over the objection of an attorney, I will not indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of such evidence. When I sustained an objection to a question addressed to a witness, you must disregard the question entirely and may draw no inference from the wording of it or

speculate as to what the witness who have testified to, if he or she had been permitted to answer the question.

As you've seen at times during the trial, it was necessary for me to talk to the lawyers here at the bench out of your hearing or by calling a recess. We met because often during a trial something comes up that doesn't involve the jury. You should not speculate on what was discussed during such times.

Now, I will first give you a summary of each side's contentions in this case and I will then tell you what each side must prove to win on the issues. In this case ACI contends that Google infringes claims 1, 3, 14 and 28 of the '550 Patent by using within the United States certain Google Earth products and the Google Maps with Earth feature. ACI asks you to award damages for the infringement. Google contends that the accused Google Earth products do not infringe Claims 1, 3, 14 and 28 of the '550 Patent. Google contends that certain steps of the claimed method are not performed by Google or its software in the

accused Google Earth product. Google's contends that claims 1, 3, 14 and 28 are invalid. Google contends that at the time of the alleged invention, there was already prior art that performed or described every element of each asserted claim, rendering the claims invalid. As such, Google contends that ACI is not entitled to any damages.

Your job is to decide which, if any, of the accused claims have been infringed and which, if any, of the asserted claims are invalid. If you decide that any asserted claim of the '550 Patent has been infringed and is not invalid, you will then need to decide any money damages to be awarded to ACI as compensation for that infringement.

Now, in any legal action, facts must be proved by a required amount of evidence. The burden of proof in this case is on ACI for some issues and on Google for others. ACI has the burden of proving infringement and damages by a preponderance of the evidence. Google has the burden of proving invalidity by clear and convincing evidence. As I told you, when a

party such as ACI has the burden to prove any claim by a preponderance of the evidence, that means that the evidence must persuade you that the claim is more probable than not. When a party such as Google has the burden of proving a defense by clear and convincing evidence, it means the evidence must produce in your mind a firm belief or conviction that the claim or defense has been proven. Although the clear and convincing evidence standard is more rigorous than preponderance of the evidence, it does not require proof beyond a reasonable doubt as in criminal cases. You may think of clear and convincing evidence as being between the preponderance and beyond a reasonable doubt standards of proof.

As I told you at the beginning of trial, the claims of a patent are the numbered sentences at the end of the patent. The patent claims describe the claimed invention made by the inventor and describe what the patent owner owns and what the patent owner may prevent others from doing. Four claims are involved here. These are set forth in your list of

claims and Court's construction of claim terminology. They are claims 1, 3, 14 and 28, which are claims to methods. These claims are divided into parts called steps, requirements, or limitations.

For example, a claim that covers the invention of a method of building a table may recite cutting a tabletop, carving four legs, and gluing the legs to the tabletop. Cutting the tabletop, carving the legs and gluing the legs to the tabletop are each a separate step of the claim. To find infringement, you must find that each step was performed by the accused infringer.

You will first need to understand what each claim covers in order to decide whether or not there is infringement of the claim and to decide whether or not the claim is invalid based on the prior art.

It is the Court's role to define the terms of the claims, and it is your role to apply those definitions to the issues that are asked to decide in this case. Therefore, as I explained to you at the start of the case, the

Court has determined the meaning and scope of the claims, and you have been provided the definitions of certain claim terms in your list of claims and Court's construction of claim terminology. You must accept the definitions of those words in the claims as being correct. It is your job to take those definitions and apply them to the issues that you are deciding, including the issues of infringement and validity. Let me remind you of those definitions:

In each claim, space-related data, means data related to a geographical location.

In each claim, plurality of spatially distributed data sources means a plurality after geographically separate data sources.

In each claim, centrally storing the data for the field of view, means storing requested data for the field of view in memory at the location of the request.

In each claim, image resolution means the level of detail or spatial precision contained in an image. In addition, image

resolutions means the plurality of the level of detail or spatial precision contained in an image.

In each claim, representing the data for the field of view in a pictorial representation having one or more sections, means providing and organizing the data necessary for displaying the field of view in a pictorial representation having one or more sections. However, the method of claim does not include a final step of displaying the visual image to the user, using the hardware of a display device or using generic graphics software or firmware associated with that display device.

In each claim, dividing each of the one or more sections having image resolutions below a desired image resolution into a plurality of smaller sections, requesting higher resolution space-related data for each of the smaller sections means dividing each of the one or more sections having image resolutions below a desired image resolution into a plurality of smaller sections, prior to

requesting higher resolution space-related data for each of the smaller sections. While dividing any given section into smaller sections must occur prior to requesting higher resolution space-related data for each of those smaller sections, it is not necessary that all sections must be divided before higher resolution space-related data can be requested for any of the smaller sections.

In each claim, repeating step F, dividing the sections into smaller sections, until every section has the desired image resolution or no higher image resolution data is available means repeating step F, dividing the sections into smaller sections, until every section has the desired image resolution or no higher image resolution data is available.

In claim 3, the coordinates of the data means a distinct position in a given space.

In claim 14, quadrant tree means a data structure where each node has four equally sized children.

In claim 28, polygonal grid model means a model of an object that represents the

objects surface using a measure of polygons to form a grid.

The beginning, or preamble of each asserted claim uses the word comprising. Comprising means including or containing but not limited to.

In claim 1, step F, the substep of sub-dividing must be performed before the substep of requesting, and step F must be performed before step G.

Claim terms not specifically defined by me should be interpreted by you based on their plain and ordinary meaning to one of ordinary skill in the relevant technology. The meaning of words in the patent claims is the same for both infringement and invalidity.

You must pay careful attention to the language of the claims. It is the claims, and not the rest of the patent, that define the invention that ACI has a right to exclude others from using. Only if you decide that an accused Google Earth product performs each and every one of the steps in a claim is that claim infringed by that product.

This case involves two types of patent claims: Independent claims and dependent claims.

An independent claim sets forth all of the steps that must be performed in order to be covered by that claim. Thus, it is not necessary to look at any other claim to determine what an independent claim covers. In this case, claim 1 of the '550 patent is an independent claim.

The remainder of the claims in the '550 patent are dependent claims. A dependent claim does not itself recite all of the steps of the claim, but refers to another claim for some of its steps. In this way, the claim depends on another claim.

A dependent claim incorporates all of the steps of the claim(s) to which it refers. The dependent claim then adds its own additional steps. To determine what a dependent claim covers, it is necessary to look at both the dependent claim and any other claims to which it refers. A product that performs all of the steps of both of the dependent claim and the

claim(s) to which it refers is covered by that dependent claim.

An accused product is only covered by, and therefore, only infringes a dependent claim if the accused product performs all of the steps of both of the dependent claim and the claim, and to which dependent claim refers. Because a dependent claim incorporates all of the features of the independent claim it refers to, if you find that an independent claim is not infringed, then the claims that depend on that independent claim cannot be infringed.

I will now instruct you on the specific rules you must follow to determine whether ACI has proven that Google has infringed one or more of the patent claims involved in this case.

To prove infringement, ACI must prove by a preponderance of the evidence that one or more of Google's products performs methods that infringe one or more of the asserted claims. An asserted method claim such as claims 1, 3, 14 and 28 is infringed if Google has used the method in the United States, i.e.,

if Google has done something in the United States that performs every step in that asserted claim. Performance of the method outside the United States is not covered by the claims.

Evidence of independent development of the patented invention may not be considered in determining patent infringement, though it may be relevant to obviousness.

Infringements of a patent is assessed on a claim by claim basis. When a thing (such as use of a method) meets all of the requirements of a claim, the claim is said to cover that thing, and that thing is said to fall within the scope of that claim. In other words, a claim covers a method where each of the claim steps is performed in that method.

The infringement of each of the four claims must be considered separately. Thus, you must compare each claim to each accused Google Earth product to determine whether each product's use includes every requirement of the claim. If the use of any accused Google Earth product does not perform one or more of the steps recited in a claim,

then that product does not infringe that claim.

ACI is not required to prove that Google intended to infringe or knew of the patent to prove infringement. ACI does not contend that Google copied the invention claimed in the patent.

Google does not dispute that steps A through E of claim 1 are met. Google also does not dispute that the additional limitations of claims 3, 14 and 28 are met if the limitations of steps F and G of claim 1 are met.

ACI and Google dispute whether the accused Google Earth products meets steps F and G of claim 1. In order to find infringement, you must consider whether each of Google's accused products infringes each of the four asserted claims - claims 1, 3, 14 and 28, and conclude that at least one Google Earth product meets every step of at least one claim.

Invalidity generally.

I will now instruct you on the rules you must follow in deciding whether or not Google has proven that claims 1, 3, 14 and 28 of the '550 patent are invalid.

Patents issued by the Patent and Trademark Office (PTO) are presumed to be valid, but not all patents that are issued by the PTO are, in fact, valid. You may find that the patent claims invalid if Google establishes the necessary facts by clear and convincing evidence, i.e., you must be left with a clear conviction that the claim is invalid. Evidence concerning the inventor's duty of candor before the PTO may not be considered for purposes of determining validity.

What qualifies as prior art.

Before you can determine whether the patent claims are valid in light of the prior art, you must determine what qualifies as prior art.

Prior art may include items that were publicly known or that have been used or offered for sale, or references, such as publications or patents, that disclose the claimed invention or elements of the claimed invention. To be prior art, the item or reference must have been made, known, used, published, or patented before December 17, 1995.

In the preliminary instructions I told you the priority date was December 22, 1995. The parties have now agreed to a December 17, 1995 priority date.

Google contends that certain references are prior art because they were printed publications before December 17, 1995, and that certain systems are prior art because they were used publicly before that date. Google contends that the following references constitute prior art:

The SRI TerraVision system; and paragraph two, the T_Vision paper.

ACI and Google dispute whether the SRI TerraVision system qualifies as prior art based on prior public use, which I will explain shortly. ACI and Google also dispute whether the T_Vision paper qualifies as prior art. The T_Vision paper is a printed publication, only if it is was accessible to the public prior to December 17, 1995. To qualify the T_Vision paper as prior art, Google must prove to you by clear and convincing evidence that this reference was disseminated or otherwise made

available to the extent that persons interested in ordinary skilled in the subject matter exercising reasonable diligence could locate it prior to the December 17, 1995. It is not necessary for the printed publications to have been available to every member of the public.

ACI and Google do not dispute that global mapping patent reference is a printed publication. You should therefore consider it as prior art to the '550 patent.

Anticipation.

Google contends the T_Vision paper anticipates claims 1, 14, and 28, but not claim 3. You may find a claim is anticipated only if all of its steps were present in a single prior art reference in the arrangement claimed to. To anticipate a prior art reference does not have to use the same words as the claim, but all of the requirements of the claim must have been present so that a person having ordinary skill in the art could make and use the claimed invention based on that knowledge.

To anticipate the claimed invention, the disclosures of a prior art

reference do not need to have been made, used or performed. Google must prove anticipation by clear and convincing evidence.

Google contends that the public use of the SRI TerraVision system invalidates claims 1, 3, 14 and 28 of the patent. This is sometimes referred to as anticipation. You may find a claim is invalid based on prior public use if there is clear and convincing evidence of each claim step was publically used. ACI and Google dispute whether SRI's TerraVision system was publically used. SRI's TerraVision system was in public use if it was accessible to the public. Factors relevant to determining whether a use was public include the nature of the activity that occurred in public; public access to the use; confidential obligations imposed upon observers and the circumstances surrounding testing and experimentation. An invention is publically used if it is used by the inventor or by a person who is not under any limitation, restriction, understanding or obligation of secrecy to the inventor.

The absence of affirmative steps

to conceal the use of the invention is evidence of a public use. However, non-commercial secret use by a third party is not public, unless members of the public or employees of the third party have access to the invention. To establish a public use of a prior art system, Google must prove the system was complete and could be used for its intended purpose. To prove that SRI's TerraVision system was used publically, Google must show by clear and convincing evidence that it was accessible to the public prior to December 17, 1995. If the SRI TerraVision system satisfied those requirements, it qualifies as prior art.

Google contends that the patent claims are obvious over various prior art references. Even if you find that the T_Vision paper and the SRI TerraVision system references do not, by themselves, invalidate the claims, you must consider those references in connection with the issue of obviousness if you conclude that those references constitute prior art.

Google contends that claims, 1, 3 14 and 28 are obvious in view of the public use

of the SRI TerraVision system and the knowledge and skill of a person of ordinary skill in the art at the time of the alleged invention. Google's contends that claims 1, 14 and 28 would have been obvious in view of the T_Vision paper and the knowledge and skill of a person of ordinary skill in the art at the time of the alleged invention.

Google contends that Claim 3 would have been obvious in view of the combination of the T_Vision paper, the Global Mapping patent and the knowledge and skill of a person of ordinary in the art at the time of the alleged invention.

I will now instruct you on the law of obviousness. Even if a claimed invention was not fully anticipated because it was not exactly described or disclosed in a single prior art reference, a patent claim may still be invalid if the asserted claim would have been obvious to a person of ordinary skill in the art at the time of the alleged invention.

In determining whether a claimed invention was obvious, you must consider A, the

level of ordinary skill in the art that someone would have had at the time of the claimed invention; B, the scope and content of the prior art and C, any differences between the prior art and the claimed invention.

The parties agree that a person of ordinary skill in the art at the time of the claimed invention would have had a Bachelor of Science degree (or its equivalent) and three years experience with research or development, engineering product development requirements analysis, in computer graphics and/or digital image processing. With more education, for example, post graduate degrees and/or study, less industry experience is needed to attain that ordinary level of skill.

I have already instructed you about how to determine what references qualified as prior art. It will be up to you to evaluate what those prior art references taught or disclosed and the scope of any differences between the prior art and the claimed invention. A claim can be obvious over the prior art based on a combination of references or considering

the single reference. To tender obvious the claimed invention, the disclosures of a printed publication do not need to have been made, used or performed. In assessing obviousness or non-obviousness, keep in mind that an invention is not obvious simply because each of its elements appeared in the prior art. Many inventions rely on building blocks of prior art, and you should not judge obviousness in hindsight. You should consider whether there was a reason that would have prompted a person of ordinary skill at the time of the claimed invention and combine the known element in a way that the claimed invention did.

Factors you may consider in this regard include whether the claimed invention was merely the predictable consult of using prior art elements according to their known functions, whether the claimed invention provided an obvious solution to a known problem, whether the prior art taught or suggested the desirability of combining elements or claimed in the invention, whether it would have been obvious to try to create the invention, for example, if

there was a design need or market pressure to solve a problem and there were a finite number of identified predictable solutions, and whether the claimed combination would have occurred in any way due to design incentives or other market forces. You should also take into account any objective evidence (sometimes called secondary assertions) that may shed light on the obviousness or non obviousness of the claimed invention. In particular, if products incorporating the invention were commercially successful as a result of the claimed invention, then that may suggest that the invention was non-obvious. But you should disregard any commercial success that was due to factors other than the claimed invention, such as other product features or sales and marketing evidence. If you find that the claimed invention satisfied a long felt but previously unsolved need or that persons other than the inventors had tried and failed to achieve the invention, that may also suggest that the invention was non-obvious.

On the other hand, if you find

that someone else came up with the claimed invention before or at about the same time that ACI's inventors thought of it, that may suggest that the claimed invention was obvious.

Finally, acceptance of the claim invention by others shown by praise for or licensing of the claimed invention may suggest that the claimed invention was not obvious. In this connection, you should give less weight to a license entered into for the purpose of avoiding the cost of litigation, all things being equal. These factors are relevant only if there is a connection or nexus between the factor and the invention covered by the patent claims.

Even if you conclude that some of the above indicators have been established, those factors should be considered along with all the other evidence in the case in determining whether Google has proven that the claimed invention would have been obvious. Keep in mind that all these factors relate to obviousness only. Not to anticipate or to publish use. Google must prove obviousness by clear and convincing evidence. I will now

instruct you on damages. If you find that Google has infringed any of claims 1, 3, 14 and 28 of the '550 Patent and you find that claim is not invalid, you must determine the amount of money damages to which ACI is entitled. By instructing you on damages, I do not suggest that one or the other party should prevail on infringement or invalidity. These instructions are provided to guide you on the calculation of damages in the event you find infringement of a valid patent claim and thus must address the damages issues. The amount of damages must be adequate to compensate ACI for the infringement. Here ACI seeks to recover the reasonable royalty for use of the invention by Google. At the same time, the object of damages is to compensate, not to punish. You should not award additional damages if you find that the patent or patents were used without permits. You also may not add anything to the amount of damages for interest.

You may award damages only for the amount that ACI proves by a preponderance of the evidence constitute a reasonable royalty.

Where the parties dispute a matter

concerning damages, it is ACI's burden to prove by a preponderance of the evidence that ACI's version is correct. ACI must prove the amount of damages with reasonable certainty, but it need not prove the amount of damages with mathematical precision. On the other hand, ACI is not entitled to damages that are remote or speculative.

Any damages you assess in this case should be calculated starting on July 13, 2010. A royalty is a payment made to a patent holder in exchange for the right to make, use, sell, offer to sell, or import the claimed invention. A reasonable royalty is the amount of royalty payment that a patent holder and the infringer would have agreed to in a hypothetical negotiation taking place at a time just before when the infringement first began. In this case, the hypothetical negotiation would have occurred in June 2005, when Google Earth was introduced.

In considering this hypothetical negotiation, you should focus on what the expectations of the patent holder and the

infringer would have had they entered into an agreement at that time, and had they acted reasonably in their negotiations.

In determining this, you must assume that both parties believed the patent was valid and infringed and that the patent holder and infringer were willing to enter into an agreement. The reasonable royalty you determine must be a royalty that would have resulted from the hypothetical negotiation, and not simply a royalty either party would have preferred. Evidence of things that happened after the infringement first began can be considered in evaluating the reasonable royalty only to the extent that the evidence aids in assessing what royalty would have resulted from a hypothetical negotiation. Although evidence of the actual profits an alleged infringer made may be used to determine the anticipated profits at the time of the hypothetical negotiation, the royalty may not be based on the actual profits the alleged infringer made. Evidence concerning Google's revenues or financial projections from after 2006 is not material to and cannot be considered for the purpose of determining the royalty

rate. ACI's financial proposals after 2006 may be given less weight for the purposes of determining a reasonable royalty.

In determining the reasonable royalty, you should consider all the facts known and available to the parties at the time the infringement began. Some of the kinds of factors that you may consider in making your determination are:

1. The Stanford license agreement, which I will discuss in more detail later.

2. The nature and scope of the license, as exclusive or nonexclusive, or as restricted or nonrestricted in terms of its territory or with respect to whom the manufactured product may be sold.

3. The commercial relationship, if any, between ACI and Google.

4. The effect of selling the patented product in promoting sales of other products of the licensee.

5. The duration of the '550 patent and the term of the license.

6. The established profitability of any product made under the '550 patent; its commercial success; and its current popularity.

7. The utility and advantages of the patented

invention over the old modes or devices, if any, that had been used for achieving similar results.

8. The nature of the patented invention; whether there is any commercial embodiment of it as owned and produced by ACI; and the benefits to those who have used the invention.

9. The extent to which Google has made use of the invention; and any evidence that shows the value of that use.

10. The portion of the profit that arises from the patented invention itself as opposed to profit arising from unpatented features, such as the manufacturing process, business risks, or significant features or improvements added by Google.

11. The opinion testimony of qualified experts.

No one factor is dispositive, and you can and should consider the evidence that has been presented to you in this case on each of these factors. You may also consider any other factors which in your mind would have increased or decreased the royalty the infringer would have been willing to pay and the patentholder would have been willing to accept, acting as normally prudent business people. You should determine the amount that a licensor (such as ACI) and a licensee

(such as Google) would have agreed upon in 2005 if both sides had been reasonably and voluntarily trying to reach an agreement. That is, the amount which a prudent licensee - who desired, as a business proposition, to obtain a license - would have been willing to pay as a royalty. You may also consider whether Google could have made a reasonable profit. This is the framework which you should use in determining a reasonable royalty, that is, the payment that would have resulted from negotiation between the patentholder and the infringer taking place at a time just prior to when the infringement began.

The reasonable royalty award must be based on the incremental value that the patented invention adds to the end product. When the infringing products have both patented and unpatented features, measuring this value requires a determination of the value added by the patented features. The ultimate combination of royalty base and royalty rate must reflect the value attributable to the infringing features of the product, and no more.

Use of the Stanford agreement.

In estimating the reasonable royalty for any

infringement, Google has relied on a license agreement with Stanford University. You will need to decide whether that agreement is comparable to the agreement that would have been reached in the hypothetical negotiation I mentioned earlier. Google bears the burden of proving that the situations are comparable. In deciding whether a license agreement is comparable, you may consider, among others, the following factors:

1. Whether the negotiating circumstances were similar - for example, whether the agreement reflected an arms-length transaction between willing parties;

2. Whether the structure of the license agreement was similar to the structure of the license that would have resulted from the hypothetical negotiation;

3. Whether the patents and products covered by the license agreement were similar to the patents and products involved in the hypothetical negotiation;

4. Whether other product functionality not covered by the patent-in-suit affects the comparability of the two negotiations;

5. Whether the relationship between the licensing

parties was similar to the relationship between the patent owner and Google at the time of the hypothetical negotiation;

6. The time when the license agreement was entered into relative to the timing of the hypothetical negotiation.

A license agreement needs not be perfectly comparable to a hypothetical license that would have been negotiated between ACI and Google in order for you to consider it. However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically negotiated license again ACI and Google.

Damages tied to a patented method.

When the claimed invention is part of the functionality or success of the accused product, damages must be based upon the value of the claimed invention. In this case, Google argues that the value of the accused product is based on many features and the performance of many methods, including other technical features and methods and patented technologies unrelated to the performance of the method claimed in the patent. You may award

damages only based on the value of the claimed method.

ACI has the burden of establishing any damages award. ACI, therefore, must prove by a preponderance of the evidence that the damages it seeks are attributable to the claimed method, and not to the other technologies, features, methods, or aspects of the accused products. ACI's evidence must be reliable and tangible; it cannot be conjectural or speculative. Any evidence of a reasonable royalty must explicitly tie proof of damages to the claimed method's role in the marketplace.

Again, you only reach the damages question if you find that Google's products infringe at least one claim that has not been proven invalid.

Damages tied to other Google products.

ACI seeks to recover damages reflecting the alleged value that Google Earth contributes to Google's profitability. ACI does not accuse additional Google products of infringing the patent, and damages cannot be awarded on any theory that they do infringe. ACI is not entitled to damages based upon the value of other Google products unless ACI establishes that it is more likely than not that revenues from those

products were generated by the use of the patented method in Google Earth. To show that it is entitled to damages based on these other products, ACI must establish a proper apportionment of the revenues Google generated from those products - that is, ACI must show what portion of the revenues generated by those products results from the infringement.

In short, to recover damages tied to additional Google products, which are not themselves accused of infringement, ACI must prove, first, that Google Earth infringes at least one valid claim of the patent, and, second, that Google Earth increases the revenues Google collects from those other products.

If you conclude that ACI has proved both of these things, then you must first determine what fraction of the revenues from the other products is attributable to the patented technology and then determine what a reasonable royalty on those revenues would be.

Any reasonable royalty rate you determine for revenues from the other Google products not accused of infringement should be no more than the reasonable royalty rate for revenues from Google Earth itself.

That's quite a mouthful. That took forty-five

minutes. And as I said, you will have copies of these instructions to take back with you during the deliberations. And I will also give you some final instructions after the parties' closing arguments, which I think will take about two hours.

You will find in each case that the lawyer delivering the closing argument may reserve some of the time from the opening to use in rebuttal.

I think before we get to the closing arguments, this might be a good time to take our morning break and then come back and have the closing arguments.

All right. Thank you members of the jury. We'll take a fifteen-minute break.

(Jury leaving the courtroom at 10:05 a.m.)

THE COURT: Anything before we recess?

MR. HAWES: No, Your Honor.

MR. SNYDER: Nothing further, Your Honor.

THE COURT: We'll resume at about 10:15, 10:20, we'll do the closing arguments at that point.

(A brief recess was taken.)

THE COURT: Be seated please. All

right. Unless there's anything else, why don't we bring the jury back.

MR. PARTRIDGE: Nothing from Plaintiff, Your Honor.

THE COURT: Who is going to deliver the closing argument?

MR. PARTRIDGE: Mr. Hawes will for ACI.

MR. SNYDER: I will for Google, Your Honor.

THE COURT: Okay. Thank you.

(Jury enters.)

THE COURT: Welcome back, members of the jury. We're ready for closing arguments beginning with Mr. Hawes for ACI.

MR. HAWES: Thank you, Your Honor. Are you ready, Your Honor?

THE COURT: Please.

MR. HAWES: Good morning once again. I'm sure it feels like its been a long week. Four days of testimony, source code, financial documents, patents, claims, videos, but it all wraps together now. And as the judge has told you, the dispute of the parties today

is in your hands. Google and Google alone decided to offer Google Earth for free. And with that free offering of the flying invention, you can image how licensing of that to companies who might want to offer that and make money would turn out. As you know, millions, millions and millions of people have used Google Earth and did so in just the first year of its release. It was a free product and it was cool. And it did very, very well. Google and Google alone decided not to seek permission from ACI, decided not to seek permission to use the '550 Patent. And that's why we're here today. That's why this lawsuit has occurred.

Now, you heard yesterday, just yesterday from Mr. Reed that even today it's Google's position that when they use someone else's invention for free, they don't have to pay a royalty. You remember when I questioned Mr. Reed and I said if I use Google Earth and I don't clock on an ad and I don't download, whatever it was, Chrome, is there any part that you say Google ought to pay to ACI? He said no. He said Google ought to be able to do that for

free, ought to be able to infringe ACI's patent for free. So that's what this is about, your decision of whether that makes sense, in view of the law you've seen that if you infringe a valid patent, you are due, at minimum, a reasonable royalty for the use of that invention.

Today you'll determine what credit is due for the '550 reissue patent. So let's talk about what it means to be a reissue patent. Most patent cases are about patents. Why is this a reissue patent? Well, it's because after the first patent was approved by the Patent Office, ACI went back to the Patent Office and pointed out some additional information they had received and the Patent Office came along and again approved the patent. And finally, some more information came in and ACI put their patent at risk again and said look at this, is it, is it still good? Is it a valid patent? And what happened? The Patent Office said yes. This patent has been triple checked and that's going to be very important when you consider some of the issues in this case, whether this triple-checked patent and what the Patent Office

has done ought to be second guessed.

The other thing that's in this patent is a list of the information that was considered by the examiner during this triple check process. First of all, and I know this is hard to read, and I hope -- I don't know if it is on your monitors or not, but here we have several references all having to do with that TerraVision you've heard so much about. I want you to remember that during the triple check process, that was in front of the Patent Office. What else was in front of the Patent Office? Well, you heard about all these events at SIGGRAPH '95. That was in front of the Patent Office too. You can see all the SIGGRAPH '95 CD's, articles, all that given to the patent office. And finally what else was in front of the Patent Office is the deposition testimony of Mr. Lau. So Mr. Lau has actually spoken to the Patent Office, he's had depositions on these issues before and ACI gave that to the Patent Office, so the Patent Office could do its triple check. That's the reissue patent that you're looking at today.

Now, of course we've talked about how this all started, how every boy wants to fly through the air and be Superman and look over the earth. You can see a man here doing the same thing, looking over the earth, using the earth tracker. Still sitting there in the corner. I'm sure they want it out of the court room, but we like it. ACI and Art+Com are proud of what they built and proud of giving this kind of experience back to people back in 1994 and 1995. And we also talked about how they brought EarthTracker over here to the United States to SGI and California and showed it in the corporate showroom of SGI in order to impress SGI's other customers. And we talked about how future Google employees Michael Jones and Brian McClenden were at SGI. And you got to hear Mr. Jones himself talking about going over and using the EarthTracker while he was there.

And then they left SGI and we heard a little bit about how they moved first to make their own company, Intrinsic Graphics. Didn't quite work out and so what did they do? They decided to move and create a company called

Keyhole. And I'm not going to take the time I did in opening when I told you this story the first time, but it's the story of this case, it's still important. Because at Keyhole they developed EarthViewer and they developed a product and they start selling that product. They charged $69 a year to their customers. There was real money involved in this product. It was a product that they cared about, that they charged money for and that customers bought.

But then what happens? They hire John Hanke. Great addition. We got to hear from him on video. They take this product that they are charging $69 for and when Google buys them, what happens? Google rebrands the product as Google Earth and it reprices the product at zero dollars. Think about that. Is the invention any less used because Google chose to price the product as zero dollars as it was used when Keyhole was pricing the product at $69? Should the payment, the royalty to the patent owner be any less because Google makes that decision? That's in your hands today, whether

that's the case.

Now, we talked early on about Google's strategy and remember when Google made that zero dollar decision, Google had a strategy behind it. We talked about this on Monday and Mr. Nawrocki talked about that strategy when he was on the stand and we'll talk again, why does Google do the zero dollars? How does that work for Google to make money? And we'll go through that in detail this afternoon. Now, the first communication is about the patent. Again, you got to hear from Mr. Jones and what Mr. Jones did right away was he told ACI it's a nice to have patent. It's not one we need, it's not even something, as he puts it, I think it was a different type of icing on the cake. It was not even something we want to use, it's just nice to have, maybe if there's a lawsuit we'll use it for defense. That's what he told ACI.

And you've heard from Google about those communications in 2006. There were a lot of them. Those e-mails are hard to read, they are old. I know it's tough to read those, and frankly they are all not that important, because

they all were based on Google telling ACI it's a nice to have patent. ACI didn't know whether Google was truly saying it's a nice to have patent, but you heard Pavel Mayer. He believed Mr. Jones. He believed this wasn't a patent they were using, that they had a different way and that this was just something that well, we might take it, we might not. It's nice to have.0

All of these negotiations in 2006 were based on that premise, on that communication through Mr. Jones and Mr. Mayer that it was a nice-to-have patent. Keep that in mind because I'm sure you're going to get to see all these E-mails in detail again today. Keep that in mind.

Now, at the end of that process, as you remember, Google's lawyers said your patent has problems and here is some documents showing you the problems your patents have. ACI not knowing if Google was right or wrong knew who to ask and went to the patent office. They said here are those documents. Is it really a problem? Is our patent still good? They risked their patent, because you go to the patent

office and you ask if your patent is still good, they may say no. But Mr. Mayer was willing to put his patent at risk, to take those documents to the patent office and ask do I still have a good patent. And as we all know, the patent office said yes.

What was happening while the patent office was analyzing those patents? Frankly, Google Earth was going gangbusters. We have seen big charts, lots of numbers. The bottom line really are the sessions. Mr. Birch testified for you and he told you what a session was of Google Earth. He said a session is when somebody opens and begins using Google Earth. So that's what a session is.

When you see those big spreadsheets with all those numbers, every one of those numbers, and I know it's millions and millions up to billions, but each time, that's someone opening and beginning to use Google Earth.

And you'll remember Dr. Castleman, what does it mean when they're using Google Earth? It means they're using the '550 patent.

And here is that spreadsheet. We don't have to go through it line by line. I'll actually let you know, you'll have it back -- you'll have a computer back in your deliberation room, and if you want to, this is PTX 55, you can look at every day that Google kept these session numbers for Google Earth. It actually breaks it down by all the different types of Google Earth. There is Google Earth for your computer, there is Google Earth for your iPad, there is Google Earth for your Android phone. Of course, those come a little bit later. Here in 2005 it was just Google Earth for the desktop. All those numbers are there. They're all on that Plaintiff's Trial Exhibit 55. If you want you can certainly take a look.

But Mr. Nawrocki, he looked at it for you, took all those numbers. First thing he did was which one of these are in the United States, because ladies and gentlemen, this is a United States patent. We're not asking you, ACI is not asking you to give credit to ACI for Google Earth's success outside the United States. This is about Google Earth in the

United States, the use of it in the United States, because it's a United States patent. That's what it comes.

He looked at it year to year and determined that since July 2010, and you have just heard the Judge tell you that's when you start the damages calculation is July 2010, that there had been over seven billion uses of Google Earth in the United States.

So that's the extent of infringement that we believe has occurred of the '550 patent.

So the first question you're going to find on that jury form is a question that ask whether Google Earth infringes. And you know what the real question is? The real question is, did Google infringe over seven billion times? Because that's what you heard about is whether the use of Google Earth by Google to provide this great interface, this flying, zooming entertaining interface that keeps its customers involved for ten, twenty, thirty minutes, whether that infringes. And you got to hear a lot of information about whether that

infringed.

The first thing we should talk about is what's the most important information you heard. And Google's witnesses will confirm, the most important information you heard about whether it infringes was about source code. Mr. Birch referred to it as the authoritative source. And Dr. Goodchild agreed, it's the ultimate authority.

So when it comes to weighing the evidence, even Google agrees it's the source code that really weighs. Let's talk about that. Who showed you that source code? Who walked through the source code with you element by element for these claims?

Now, you remember on Monday, I wasn't the only one who stood up. Google's attorney stood up as well. And what he told you is this case is about, it's about a patent case and there are four very specific patent claims. And he's right. This case is about those patent claims.

But it was Dr. Castleman who went through those patent claims with you element by

element and kept pointing out for you the files, the modules and the comments of Google's engineers that showed how each step of each of those claims was being used by Google Earth. That was the source code analysis you heard.

Dr. Castleman is the only one who went through every step of every claim with you. I know it took a while, I know that it was not a quick and easy process, but frankly Dr. Castleman didn't want quick and easy, he wanted right. He wanted correct. And that's why he went through that source code with you step by step, comment by comment, module by module.

And he went through claim 1, and even because there was different source code, and remember, it's the source code that counts, he went through different products of Google in order to do a full analysis for you of every element, every step of the '550 claim.

That's what Dr. Castleman did. Now, Google, they don't disagree. The Judge just told you, Google doesn't disagree that they do the first two-thirds of that patent claim.

No dispute. Dr. Castleman got up there, go through all that source code, no dispute, we all found that out.

We did find out that they do dispute steps F and G. And frankly when you look at step G, that means they were disputing step F, because step G says do step F again. And we can all see looking at Google Earth it does it again and again and again. You get frames as you move through. It's those smooth frames that allow you to see the earth moving as though you were flying.

Let's focus on that step F and figure out what the real evidence was.

Now, Mr. Birch testified about what Google Earth did, but one thing Mr. Birch told you was that he was not the author in any of the Google Earth source code. He told you there were some brilliant engineers at Google, brilliant engineers and they're the best in the industry, and they are the ones who really write the code. So that's interesting. Mr. Birch, who is not evidently one of these engineers, he may well be brilliant, but he's not one of the

ones who wrote the source code. He came here to talk to you. But the brilliant engineers, we don't know where the brilliant engineers were. We know they weren't here in Wilmington, Delaware. I hope they're enjoying themselves. You saw video, if you remember, we saw video of two of their engineers, we saw video of Julian Merce who was one of them, and John Rosh, two software engineers, the Google project lead engineers, we took their deposition, but they didn't come here from California.

No one from Google who wrote the source code came here to get in that witness box and tell you about how the source code works, didn't come.

Dr. Goodchild, their expert witness, he came. He came and he got in that witness box and he told you why he thought Google Earth did not infringe. One of the things he told you was that in describing step F, he described it, these are his words, he says yes, that phrase has been used many times in the trial. The phrase in question, coarse to fine. That's what he used and agreed described step F

of the '550 patent, the step that's being contested here, the step that you need to decide about.

Then he said, and that's why Google doesn't infringe because it doesn't do coarse to fine. That's what he said. That was the reason. The reason that he gave.

But then he was presented with some source code, some source code he didn't tell you about when he was talking with his attorney on the stand. The source code he was presented with when ACI's attorney started talking to him. He goes down to a particular line in the source code and the source code says the default is zero, which means coarse to fine. And he agrees. And then he agrees that coarse to fine is the shorthand for referring to the process in step F of the claim. So the source code had the very thing that he agrees describes step F of the '550 patent claim. He agreed to it.

So then what happens? He's agreed that the source code does this. Then what happens? Well, all of a sudden, he's not in a

position to analyze the source code anymore, having agreed the source code says default, do it the way the patent does it, he decides he has no basis to answer the question, he would have to consider great detail, it's a very complex source code. He sat in that witness stand and told you he understood this product enough to tell you that Google Earth didn't infringe.

But when he realized that there was source code that said it did, all of a sudden it was too complex. He couldn't figure it out. He was not in a position to do that today. Well, maybe he's in a position to do it next week, but it's not going to help any of us, because it's not evidence in this case. He needed to be in a position to do that today if he wanted you to assess his evidence in favor of Google.

And then there is his argument about step G. Now, all step G says is do step F until you reach one of two different resolution points and just do F over and over. And we have already seen, Google does step F. If you look at some of the things he said, he said well, it

doesn't repeat. Maybe that's because he doesn't think Google does step F.

Then he says claim 1 requires these four substeps and that is simply not true. He never tells you why it's not true. He never tells you what it is Google is doing. All he's really saying is Google doesn't do step F, therefore, it doesn't repeat, but we all seen that he did admit that Google does step F, but the source code showed it. Now, all we will get is it just doesn't, it just doesn't, it's simply not true.

That's not an argument against infringement. That's not evidence that weighs. The evidence was what Dr. Castleman showed you, the modules, the file names, the specific reasons why it doesn't do -- why it does each step.

And, for example, in step G, remember there are two parts, it's still you get the right resolution or you run out of data, and you can see both of those things in here. You can see the target image quality module is in there. You can see the max level module is in

there. Target quality, that's resolution, maximum level, that's when you run out of levels, it's the exact stuff and it was explained to you by Dr. Castleman with no response from Dr. Goodchild.

What Doctor Goodchild and Mr. Birch did use were made for trial animations. So Doctor Castleman comes to you, works through the source code, file by file, module by module. Mr. Birch and Doctor Goodchild come to you with an animation that was made for this trial, not for Google customers, not for Google's internal engineers. This isn't a Google document that was around before this case. This is a Google document created by the lawyers to show you.

Now, Mr. Birch worked with the lawyers, Doctor Goodchild worked with the lawyers, but these were not Google's original documents, they were something that was created for you. Doctor Goodchild said the same thing, the entire slide set was jointly prepared between him and the attorneys.

He also said, and it's interesting, he said that the animation that I

prepared was the basis for Peter Birch's testimony. So if you think of Doctor Goodchild and Peter Birch as kind of separate independent evidence on the part of Google, that's not what Doctor Goodchild said. He said that he created this animation and that was the basis for Mr. Birch's testimony. So think about that. There's a link. Doctor Goodchild and Mr. Birch, same animation, same document, never used with Google's customers, never used by Google's engineers. That's the evidence that was shown to you. And then it wasn't actually clear what Doctor Goodchild had done because on one side he said the animation I prepared was the basis for Peter Birch's testimony, but then he said I have no particular knowledge about the relationship between the slides that Peter Birch showed and the slides that I showed. How could you reconcile those two things, especially when you look at the slides? And we've got examples right down there. I don't think those slides were independently developed, they sure look about the same to me.

So in the end on infringement you

need to make a judgment about whether we, ACI, have shown you by a preponderance of the evidence that these claims are infringed by Google Earth. On one side you have the evidence Doctor Castleman presented you with, the source code of three different types of Google Earth, capturing all of the accused products. On the other side you have a made for trial diagram that was created just to show you in this trial with no brilliant engineers coming here from California who wrote the source code to tell you about what the source code really does about what the product really does. It's your job, not my job, to weigh those. And you can weigh the source code more heavily, but you consider all the facts and make your own judgment. I would remind you that both Mr. Birch and Doctor Goodchild agreed the source code is the ultimate authority on what the software does, not a made for trial animation.

So when you look at the first question on your verdict form, the very first thing you need to decide is whether Google Earth infringes Claim 1. And if you decide that based

on Doctor Goodchild saying that the source code shown to him showed the course define, which is how he defined the operation of Step F, you'll see that indeed all of the elements are used by Google Earth and Google Earth infringes Claim 1 of the '550 Patent.

Now, the nice thing is that once you get to that point, actually gets pretty easy in question 1, the verdict form. And that's because Google has not in any way contested that if it's infringing Claim 1, it infringes Claim 3, it infringes Claim 14, and it infringes claim 28. They haven't contested it. They haven't contested that the additional requirements of those claims are met by Google Earth. Doctor Castleman walked through all of those with you and the source code, but you don't even need to worry about it, because it's not even contested. So with regard to that first question, you can go ahead and check off Claim 1, Claim 3, Claim 14 and Claim 28.

So after the first question on infringement in your verdict form, you'll see several questions, numbers 2 through 8 are all

about all this prior art stuff, the TerraVision, the T_Vision patent that he showed for just a little bit. Remember he talked about obviousness. All of that information, the same things the Patent Office has already triple checked and they are asking you to question that to decide that the Patent Office got it wrong.

Now, what are they basing -- what evidence are they basing that request on? How are they trying to tell you they have clear and convincing evidence of invalidity? Well, they certainly have Doctor Goodchild. He claimed the patents were invalid, but what I want you to keep in mind is Doctor Goodchild likes to simplify things and he told us that, he told us he's interested in simplifying the case and when we asked him about, you know, going into the files, he said it's my belief that taking them in detail through source code and talking about the meanings of variability would not have been particularly helpful. And the people he's talking about are you. That's the jury that he's saying he's not going to provide detail to because that wouldn't be particularly helpful.

And maybe it wouldn't have been helpful to Doctor Goodchild, but it would have been helpful to you. You deserved to get the detail, not the simplification, because you're making a difficulty decision. You're making a decision about a technology that the Patent Office has looked at, very technical references, very technical demonstrations, you deserve the detail.

What other simplifications did we encounter with Doctor Goodchild? We already heard one of them, which was in the infringement analysis when, you know, the animation, the simple explanation was my animation shows there's no course define, so no infringement. What's the simple explanation? What was the detailed explanation? And you saw it. He said it the detailed explanation was the source code shows there is course define. The source code shows that the Step F, substeps are all down here, he was the one that said Step F is course define. He was the one that said the source code showed it.

What other simplifications did we

see? You'll remember his simple approach was just to highlight the text he liked and you remember it was pointed out to him that that text follows the words rather than. In fact, the opposite was true. If you simplify too much you run into some problems and Doctor Goodchild certainly did in the way he considered the evidence in this case.

Well, who else do you have to look to? Well, you have Mr. Lau. Now Mr. Lau said, you know, I myself could not attend this symposium. That's what he said at one point in the transcript. But in another point in the transcript I said were you there? He says yes, I was. So at one point I'm not there, at a different point, I am there. Now, he comes back and he says well, there were some receipts and those show that I'm there. Now, if you had made a mistake testifying under oath and you knew you were going to have to explain it, and your explanation was going to involve some paperwork, would you bring the paperwork with you? Would you show the jury I made an honest mistake, here are the receipts? We didn't see any receipts,

we didn't see any paperwork. There was no explanation other than just believe me now, don't believe me then. That was about what you got.

Now, here we get to the real contribution of this. We've got the over simplification, we've got the believe me now, believe me then, but what's really important when you look at the prior art is they never showed you a single line of source code. They want you to believe what TerraVision was doing at SIGGRAPH '95 based on a whole bunch of documents and grainy video and some of those documents don't even work with each other, but you know, they have the source code.

Doctor Goodchild admitted he reviewed the source code. Doctor Lau said he wrote most of the source code. So if they had the source code to TerraVision and they could have shown you exactly how it works, exactly how it was being displayed at SIGGRAPH '95, why didn't they? Why did they come here with a whole bunch of different papers over a couple of years and say it's all kind of in there and

here's a grainy video? Why did they take that approach when the Judge has instructed you that invalidity requires clear and convincing evidence? They had the source code and they didn't bring it to you. They didn't show it to you. If they wanted clear and convincing evidence by their own admissions, they should have gone to the authority. They should have gone to the ultimate authority according to Doctor Goodchild, the source code. They had it and they didn't bring it with them. You can take that into consideration when you decide whether the Patent Office should be second guessed.

So that's my ultimate question on all of this prior art. Where is the source code? They have it. Why haven't we seen it?

So if you find infringement in Question 1 and you don't find that this prior art was source code we don't even know from Questions 2 to 8 causes the Patent Office to be second guessed after the triple check, then you move into what is probably the toughest part of this case. And that's the damages part of this

case.

Now, the statute we've all seen is not too tough. It says that upon finding for the Claimant, the Court shall award the Claimant damages adequate to compensate for infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer. Now, it doesn't say the non free use. It doesn't say the use that has direct revenue. It says the use. When Google Earth Free is used by Google, they are using the invention and ACI is entitled to a royalty. I know Mr. Reed doesn't agree, but that's what the statute says.

Now, on the damages side of the case, you heard the Judge discuss there are a large number of factors. And every one of those factors if you read through it, I'm not sure it's every one, but perhaps it's 90 percent of them say may, you may consider. You may consider X, you may consider Y. There's like 25 factors you may consider. And that makes it difficult. Right? You're not -- infringement you look at each step, you decide if it's there.

Damages it's like well, we can look at this, we can look at this, we can look at that. I'm going to tell you the ones I think are important, but you need to assess the record and that's why damages are difficult. You need to look at all those potential factors and decide what you think is right, what you think is a reasonable royalty for the use made of the invention. And I'm going to start with that Google strategy document and I'm going to turn the page in a moment once we get inside it, because this is one of those confidential documents we talked about on Monday.

I kind of think of this document almost as financial source code, because like source code, it's confidential and I always have to play with the paper when I put it up. Like source code it tells us what Google really does. There is their internal strategy, so we're finding out what they really do and also like source code you hardly ever hear the Google witnesses talk about it. Mr. Reed never talked about this strategy document. No other Google witness ever discussed Google's strategy at the

time that Google Earth was being released. Why doesn't Google want to talk about their own strategy? Doesn't make much sense.

I'll flip the page so we can get into the document. So we talked about the strategy last time and the strategy is complex. It's kind of hard to read, but the bottom line is the strategy is about monetization. And you remember that term we've seen it in lots of Google documents, that's making money, and even now a few months after Google Earth's release, Google Earth is the number one Geo application there supporting monetization for Google. So there's no question that there was not Geo for good, this was good for monetization. That was their strategy.

So what's their strategic framework? We talked about this a bit and Mr. Nawrocki went into it in more detail than I can. I'm not an expert on this. What he told you was that what their strategic framework showed was their top priority back in 2006 was just getting more users. It wasn't necessarily about immediately getting revenue from those users

right away, it was about getting the users into their framework so they can learn information about those users. By using Google Earth they got to see where you might want to go on vacation, where you lived, what you were interested in. All of that information comes back into Google and you can see it in their UIAP model. And they use that information, you can see they use that information for advertisers, for publishes, they use that information to be more profitable. And what do they call that? They call that the network effect. Having the most users, advertisers and publishers provides data that we use to increase targeting relevance. That targeting relevance, that's all about that big category of advertising right there in the middle of monetization. What they are targeting are advertising. What's relevant is the advertisements you and I see when we do anything on Google, because Google has information about us from all these free applications. And that increases the amount of money they make from advertisers. And it's explained right here in

2006 in their strategy document. So Google's concern at the time was to bring users in, not necessarily immediately make money off them, but bring them in. And guess what, Google Earth did that really well. It was really effective in bringing those users in. And Google itself understood in 2006 that that would create a network effect that would allow them to make more money off advertising. And it's in their internal strategy documents, the document that was never discussed by a single Google witness.

Let's turn to the Geo business. So the Geo business, as we know, has Maps, it has Earth, it has I think Local Search was the third one. How did the Geo business see their development? And Mr. Lodge, could you move three slides ahead, please. The Geo business saw their development as focused on, as they put it, the overarching investment focus on growing users and usage.

That's important language. It's their overarching investment focus. So remember what both Mr. Nawrocki and Mr. Reed told you. The process when you're trying to figure out

damages, the process is if Google had been willing, if they had been willing to license the patent, that's something they had been willing to do, and they had come to the table saying we want permission to use your patent, we're willing to pay you a royalty for that. What would have been important to Google in making that investment? Because getting intellectual property that you can use for your product, that's an investment. Getting a patented method that makes your product do the critical things it's supposed to do, it's an investment.

And how did Google say they invested? They said their overarching investment focus was in growing users and usage. Mr. Reed didn't talk about users or usage. You have heard about the users and usage. You have heard about the billions of downloads and seven billion uses of Google Earth. Each of those uses is an infringement of the '550 patent.

So when you go back to talk and you think about the instructions on damages, I want you to take into account Google's internal strategy of growing the users and investing in

users and usage, because that's what Google's documents tell us Google wanted to do.

The other thing you need to take into account is the view of the '550 patent. If you remember, the '550 patent, Google said it's nice to have, no big deal. That's not how you treat the hypothetical negotiation. Mr. Reed agreed, when you're in the hypothetical negotiation, that patent is valid and it's infringed.

And you know how Mr. Jones characterized the patent that's valid and infringed, he characterized as terrifying. He said if it describes something we already did which would be like terrifying. For a business, you can kind of understand that. They made this investment in Keyhole. They want to reach hundreds of millions of people with Google Earth and what makes Google Earth special the ability to fly and zoom and have the graphics come at you in a smooth way that makes it feel natural, that makes it feel fun, and that's what they were going to have to negotiate over, because that's what the patent allowed them to do, the

'550 patent.

So they're coming to that negotiation table and they're kind of nervous. It's an essential patent for their product. What are they going to think about? Are they going to think about the kind of licenses that they do with technical incomparable patents like the one you heard about from Stanford? You remember that Stanford license you heard about, Dr. Castleman told you it wasn't technically comparable. The '550 patent was essential, and the Stanford patent applications which was in that agreement, they weren't essential. They were kind of nice to have little things. We know what Google does with nice to have, Google told us, they make a lump sum payment. They say if we ever use it, great.

But that's not what this case business. This case isn't about a nice to have patent, it isn't about the kind of things you saw in that Stanford agreement. It's about a patent that was terrifying in the words of Mr. Jones, a patent that they were infringing and valid. That's how you have to consider it

when you look at damages. Terrifying.

Now, we also heard from Mr. Reed that he talked to Dr. Goodchild about the Stanford agreement. Do you remember that? Dr. Goodchild never said a thing about it. He never said it was technically comparable. He didn't get on that witness stand and tell you anything about that. Instead he got off the witness stand and then Mr. Reed just kind of said, well, I had this conversation. I asked Mr. Reed, well, what about that. He said it's not my expertise. Remember, he said I'm not a technical expert. I don't know if it's technically comparable. He couldn't answer questions about it.

So you got Dr. Castleman who was willing to get up there and say, I'm an expert, these Stanford agreement, nothing like Art+Com's patent. Then you got Dr. Goodchild who wasn't willing to even get on the stand and say that.

In the damages instructions you will be told you may consider the Stanford agreement. Based on the evidence, the technical comparability, you also may not.

Now, we were in the situation where the terrifying patent, and we have got to figure out with seven billion uses, what kind of license deal would they have come to. Well, we do have one point of reference. There were typical license rates that were discussed in 2010. And that 2010 is a ways after 2006, and the Judge has instructed you that you can take that into account. You can give less weight to something that's farther in the future, but again, you may.

You may also think that this user rate is the only one that really reflects the use of Google Earth because Google Earth is offered for free, so a rate based on revenue or profit, is that a rate which under the statute reflects the use of the invention, or is the ten cents per usage rate the one that reflects the use of the invention. You get to decide that. The Judge has instructed you, you may consider it, you may not. It's your call.

So another data point for you to consider in what is the challenging consideration of damages.

What else can you consider with regard to damages? Well, Mr. Mr. Nawrocki told you that he determined a 30 percent assignment of value to the patent. Now, you remember that was based on Dr. Castleman, he talked about the different things that go into Google Earth. He talked about how well Google has some amazing infrastructure. And they do, they got huge server farms, not just Google Earth, of course, G-mail, Google Earth, Google.com, big server farms, lots of software and they also put a lot of software into the world, StreetView, a lot of other things. That's an essential part of Google Earth. Dr. Castleman agreed, it's essential.

They also have to get all the data for Google Earth. I mean, maybe Google owns satellite. I don't know, but somehow you got to get the data from the satellite that are taking pictures of the earth at all these different resolutions from Wilmington as a whole to a picture that can pick out you or I as we walk out of this building. All geographic data all coming from these satellites. And we give

credit to them, they did, Google Earth is amazing with the amount of data it has, the amount of things you can see in it. That's to Google's credit and Google Earth wouldn't be what it is without that. That's essential to Google Earth.

But you know what the third thing that's essential to Google Earth is the '550 patent. It's the method that allows Google Earth to zoom and cleanly bring you with the view you want to go from place to place.

You can have all the servers in the world, you can have a bunch of geographic data, but if it's chunky and moving like this, that's not what Google Earth is about. That's not what makes Google Earth the successful product with seven billion uses that Google has received from the use of that.

So with all these data points and all the instructions the Judge has given you, you'll need to think about what's the right reasonable royalty. What's reasonable for the use that Google has made of Google Earth, the seven billion uses Google has made of Google

Earth. You get to decide that. You're the jury. It's not Mr. Reed. It's not Mr. Nawrocki. It's not me. It's you, that's your role.

I ask you to look carefully at the instructions, think about the evidence. You're going to have with you binders and if you have taken any notes on the trial exhibits, you'll be able to pull the binder out, they'll be numbered and all in order. If you want to look at one of these specialty strategy documents, you can do that. It's all going to be there for you. And I encourage you to look at the evidence carefully and decide what the right rate is given the use made by Google of Google Earth.

We know what the use is, it was uncontradicted. Mr. Nawrocki testified over seven billion sessions. And Mr. Reed never challenged that. No Google witness ever challenged that. So that's the only number you'll hear in the evidence of how many sessions there were of Google Earth that were infringing the '550 patent. Over seven billion.

But you will a need to take all

the facts into account in trying to decide what that means in terms of giving full credit to ACI for the contribution to this success which was the '550 patent.

Google should not be able to say I get to use your intellectual property because I give it away for free. That's not their model, there is no free lunch. We have seen their strategy framework. That should not be the outcome here. I ask you to determine a reasonable royalty and apply it to the use of Google's invention and award ACI the appropriate damages.

Thank you in advance for all the hard work you're going to do on deliberations. And thank you right now for all the work and attention you have given this jury trial this week. We appreciate it at ACI and we look forward to your verdict.

THE COURT: Thank you, Mr. Hawes.

Mr. Snyder.

MR. SNYDER: Thank you, Your Honor.

May I proceed, Your Honor?

THE COURT: Yes, please.

MR. SNYDER: Google has been telling ACI for ten years that it does not infringe this patent. For ten years we have been trying to make them understand that what Google Earth does is different than what this patent describes.

We wanted to come here and we wanted to explain to you what Google Earth does and how it is different. We didn't think it was going to be helpful to wheel in stacks of printouts of source code and tell you to look at little bits and pieces of something that most of you couldn't understand because it's written in a language that you don't read. And there are so much of it. It would take hundreds of hours as you heard from Dr. Castleman.

Instead, we brought the senior product manager who has been working with this product for ten years to explain how it works. We brought an expert witness who came in and explained how it works. And once we had done that, what did you hear in response? What did ACI come and ask you to believe? What evidence

did they put on to say nope, that's not a description of how it works, it's different? What was that evidence? There wasn't any.

You have all been very patient and attentive and we really appreciate the time that you have given us to give us our day in court so that we can explain to you and you can decide that what Google Earth does in accomplishing this very specific process of going from coarse to fine is different from the way it's claimed in the ACI patent.

My job today is to try to review that evidence with you and show you piece by piece how you should reach that verdict that Google does not infringe once you've considered all evidence. We're putting it in your hands and trying to give you the tools to do that with the explanations that we have provided.

Just as I did in the opening, I'm going to be here for a little while, so I want to give you a quick roadmap into what I'm going to say.

First, I want to talk about how Google Earth uses a different approach, and I'm

going to spend most of my time talking on that, because it's very important.

Second, I'm going to talk about how ACI is still trying to claim for itself public methods, things that were known. This very special technique was already out there.

And finally, I'm going to have to spend a little bit of time talking about a reasonable royalty, because ACI has spent so much time talking about that issue.

Let me start with the first issue of how Google uses a different approach. From the very beginning of this trial, we have tried to help you understand that it is about the claim language. And you have heard directly from the Court that that's what it's about. This case isn't about some generic descriptions, it's the about the claim language.

What did the Court tell you? You must pay careful attention to the language of the claims. It is the claims and not the rest of the patent that define the invention that ACI has the right to exclude others from using. Only if you decide that an accused Google Earth

product performs each and every one of the steps in a claim is that claim infringed by that product.

When did ACI show you the language of those claims? It wasn't in their opening. It wasn't when they had the inventors on the stand. ACI didn't even show you the language of the claims until Dr. Castleman came and testified.

And I was kind of watching today. When is ACI going to show the jury the language of the claims that define this invention? He had talked for fifteen minutes before he even showed it. And you know what, he still hasn't told you what the invention really is about. Instead they just want to use some vague descriptions and hope that you'll agree with them.

That's not what we want to do. We wanted to help you to understand what is the invention really about. They opened this trial by telling you that this invention was about flying. In fact, he told you about that again, it's the flying invention. This invention isn't

about flying. Flying has been known for a long time. You saw this patent in evidence. This is known as the global mapping patent. This is almost ten years before their patent and talks about how you use a computer to fly to that location in a step zoom mode.

They even admitted, Mr. Mayer on the stand, that flight simulators, the ability to fly around, that isn't something he invented. He was asked:

"Question: Another kind of computer system used to visualize geographic data were flight simulators; right?

"Answer: There were Flight simulators at that time, they existed, yes."

And then at the end:

"Question: You didn't invent flight simulators, did you?

"Answer: No, we didn't claim that either. "

They brought in two of the inventors to testify for you. And did they ask the inventors what is this invention, what is it about? No. They told you about a ball. They

brought the ball in. The ball is kind of cool. But the ball isn't the invention, and that's what they told you. You can look through that claim language and it doesn't mention the ball even once. In fact, he said it's just any pointing device.

They told you about a couple of technical things that they had solved. They talked about texturizing. Okay, maybe that is a technical problem that they had to solve with their demonstration. But if you go through the patent language, do you see the word texturizing in there? Do you see anything that describes this patent and these claims related to texturizing? No.

There was one other technical problem they told you they solved. They talked about this floating point precision problem, that is you have this much data, you only have so many numbers to keep track of it. So as you get closer to something, you literally run out of space and it gets too fuzzy. He said that's a problem we solve.

Okay. That's fair. I want to

give them credit where credit is due. They do at least mention that in the patent. It's not in claim 1, though, it's in claim 3 where it talks about converting one coordinate system into another coordinate system. I asked the inventor, "Mr. Mayer, did you invent that idea?" And he said no.

"Question: You also didn't invent the idea of converting one coordinate system into another coordinate system, did you?

"Answer: No.

"Question: People have been doing that for probably about as long as there have been coordinate systems; right?

"Answer: Yes, that's right.

"Question: Something that existed long before you applied for your patent in December of 1995; right?

"Answer: Yes."

They didn't invent this thing that they added on to claim 3. That might have been a problem that they solved for their demonstration, but it's not what this patent is about.

Well, then they said this patent is about going from coarse to fine. And you heard him again today, well, it's about coarse to fine. Mr. Goodchild admitted that what Google does is go from coarse to fine, and therefore, tad ah, they infringe.

This patent isn't about just going from coarse to fine. It's about a very specific method of going from coarse to fine.

I asked their inventor, Mr. Schmidt, whether they invented coarse to fine. I asked him, "Aren't there other ways to do it?" And he said, "Yes."

This is Mr. Schmidt's testimony:

"Question: There are various ways of doing coarse to fine images, there is not just one; correct?

"Answer: Sure, there are different -- yeah.

"Question: My question was did you invent every possible way of going from a coarse image to a fine image?

"Answer: Every possible way? No."

They didn't invent coarse to fine. So when ACI stands up and they say, Google Earth does coarse to fine, just look at it, therefore they infringe. That's not evidence. That doesn't meet the claim language. That doesn't satisfy the instructions that the court has given you to apply the words of the claim. What do the words of the claim look like?

Well, there is a whole lot of them. And it takes a long time to read them. And it's kind of complicated and it's kind of hard to put it into context, but we wanted you to understand what the claim is really about.

So we asked Dr. Goodchild to come in and explain what that claim means in the context of what you would see on a computer. And he said if you go through steps A through E, you'll get an image on a computer, and we don't dispute for this trial that Google Earth does step G.

What happens in step F according to patent claim. According to the language of the patent, you have to divide that image, then you have to request it, then you have to store

and represent it on the computer.

You have to go through all of those four steps before you get to the repeating step, step G. Then what do you do? You take one of those smaller images and you divide it, and it gets stored, and it gets represented. It gets shown on to your computer.

Then what you have to repeat it again. And you take another one. And you keep doing that process over and over until the entire image gets down to the level of detail that you want. That you have that level of precision that you want. And Dr. Goodchild said, this is my analysis of how this would really work in practice, this is what these claims mean.

And after Dr. Goodchild testified, what is the evidence that ACI put on to say nope, Dr. Goodchild got it wrong, that's not the way it works.

There wasn't any. And it wasn't because they didn't have the opportunity. Doctor Castleman came back and they asked him one question and I'm going to get to that in a

minute. But did they ask him, was Doctor Goodchild's description of the patent wrong? No. They didn't ask him that. Did they put on one of the inventors to say that's not how it works? No. What was the evidence to say this isn't the accurate description? There wasn't any.

So now let's talk about how Google Earth got developed. But before that, one quick point. And there's something the Judge said and I want to make sure we all understand so we're on the same page here. We can test, Google can test that Google Earth practices Step F and Step G of Claim 1. Now, there are three other dependent claims, Claims 3, 14 and 28, but if Google doesn't infringe Claim 1, then it can't infringe those other three claims and that's what the Court told you, because a dependent claim incorporates all of the features of the independent claim it refers to. If you find that an independent claim is not infringed, then the claims that depend on that independent claim cannot be infringed. Well 3, 14 and 28, all dependent claims on Claim 1. So if Google Earth

and Google do in the infringe Claim 1, they cannot infringe those other three claims.

Now, let's talk about Google Earth and where Google Earth came from. You've heard all this, so I want to summarize it for you, but you heard from Mr. Michael Jones. And he's here in the courtroom today. Mr. Jones came and shared with you his description in history of his passion for this area and his passion for this product. He described for you his history in the global visualization, this general area going back to the early 1980's and how when he had an opportunity after he left Silicon Graphics he wanted to start, and built a demo that would do this process of allowing people to zoom around and get in detail images of anywhere in the world. He and three of his colleagues designed and built that demo in his dining room.

They then took that to another company called Intrinsic Graphics and you heard him describe how it was not part of the general business plan at Intrinsic Graphics, because what they were doing there was making software for games. But this was his passion. He still

wanted to pursue this product so they spun it off and they created Keyhole. And they introduced a product called EarthViewer and you heard Mr. Jones describe how EarthViewer became a popular system for visualizing the earth. It actually attracted national attention. CNN used it to visualize world events.

When ACI contacted Google about Google Earth after Google purchased Keyhole and after they released it as Google Earth, what did ACI say? Did they say you've copied our patent? Did they say, you're doing what we do? No. What Mr. Mayer said then in January of 2006 is that you succeeded where we failed. And what did he say back then when he first contacted him? He said you figured out most of the same things on your own and you had a lot of new ideas we never thought about. A lot of new ideas. And you know what, one of those new ideas was this way from going from course define that is different than the way they describe in the patent. Mr. Jones knew immediately that there was a different.

When Mr. Mayer sent that note to

him in January of 2006, he sent the patent with it. Said so right in the e-mail that you all saw. And Mr. Jones was able to read it and he was asked, what did you think about that patent? And he said I felt it would be sufficiently inferior to what we already did that I couldn't imaging downgrading Google Earth to that. They didn't want to do it the way they describe it in Claim 1. They didn't want to infringe on the patent, because they were doing something different.

They've told you this story of the development several times. They told you in opening, they told you again in closing, but let's be very clear. The Court has instructed you that ACI does not contend that Google copied the invention claimed in the patent. That's not what this case is about. This case is about comparing how does Google Earth work to the claims of the patent. And when you do that, how does it actually work? It's very clear that it does not infringe. And there are two reasons for that. One is it does not do Step F. Step F requires in one particular subsection that you

have to request the higher resolution space-related data for each, each of the smaller sections. So first you divide it, then you have to request that data for each of the smaller sections. You have to do it for each one of them. Not some of them, but it has to be every one of them. Now, Doctor Castleman and Mr. Birch came and explained to you how Google Earth works and apparently ACI thinks we should have brought somebody else. Well, we thought that if we brought the person who knows more about this product than probably anyone in the world, that would be the right person. Peter Birch is the Senior Product Manager for Google Earth. It's true. He didn't write all the code. He didn't write the code. He was the manager for the product for 10 years. And he testified to you he knows the code. They didn't try and test him by showing him any code, but what did he do for you? The amount of code is enormous for a product like this, and what did he do? He tried to explain to you how the product works. That sounds like the right kind of person to testify to me.

Doctor Goodchild came as well. And he said I've looked at the code, it took me hundreds of hours. I've looked at the code and this is the way it works. And he described it for you and what did he say? He said well, you start with an image, and then you divide it. I'm sorry, yes, this is the '550 Patent, so let me go forward. I want to show you what this each means in the context of the '550 Patent. I appreciate my partner over here, Mr. Williamson, making sure I don't go off track.

You have to start out by dividing each one of the sections, so you divide it in onto two, then you have to request the data for each of those smaller sections, you have to store them, you have to represent them. Okay. You have to do it for every one of those children nodes every time, divide and then you request each of those. And then you repeat that step each time. Now, what does that mean compared to Google Earth? This is the information -- I'm making noises. This is what Doctor Goodchild showed you. It's very similar to the one that Mr. Birch showed you. You start

with an image on your computer and then it starts going through what they called the metadata tree, traversing this tree and it goes all the way down to the desired level of image. It follows that entire tree within the field of view. And it creates a list of all the different possible nodes, all of the images that you might need that fit within that field of view. After its done all of that process, after its done what the patent describes as the dividing step, traversing this tree, then it does something else. It prioritizes all of those nodes. It moves them around and says which ones are more important and it puts those at the front. And then and only then does it start requesting them. And it requests several of them at a time. You heard Mr. Birch explain how they are like workers, and they all go out, we don't know how fast they are going to get back but we send them out and when they come back, then we display them if we still want them.

So in this example B1 came back first even though it's not at the level of

detail we want, so we display it, but then we start seeing images for the level of detail that we desire and we display those, and they come back -- once we get all of those, the process of the claim, Claim 1 stops. But that happens in Google Earth before all of the images are requested. And remember, you have to request each of the subsections. But in Google Earth we don't do that. So if you change that metadata tree to compare what you start with to just what you end up requesting, it's far, far less than all of those images.

Now, you heard testimony from Mr. Birch that this process does not request each of the subsections. He was asked, in the approach used by Google Earth products, are all of the traversed nodes requested before drawing the final scene? Answer, are all of the traversed nodes requested? No. In fact, as you can see in this example we haven't requested all the nodes on this list, we've only requested a portion of them. And he was asked why? And he explained it. And it turns out that this explanation is very helpful. Question, why does

Google Earth not request the image for each node that is traversed? Answer, so as I mentioned earlier, what we're really trying to do is what's important is getting the final image to the users as quickly as possible, right? And we want it to feel fast and so we don't want to mess around doing things that don't help us achieve that goal. And so to do that, we're going to prioritize -- you know, by reprioritizing nodes we get to that answer sooner. Doctor Goodchild told you the same thing. And he explained to you that within this process they've been smart enough to skip the nodes that they don't need. Now, they criticized Doctor Goodchild for not showing you a bunch of source code that we really didn't think was going to be helpful. I mean, it's like somebody saying if you want to understand an airplane, let's pick 15 or 20 different random pieces and show somebody and tell them they're supposed to understand how an airplane works. No. Isn't it much better to get somebody who actually helped the product manager for the airplane, somebody who studied all the

parts of the airplane and then have them explain what the airplane does? That's what we tried to do. And we hope that that was more helpful to you. They showed Doctor Goodchile one line of code and they said ta da, it has course define in it, so doesn't that mean we infringe? They took one line of code, they didn't give him any context at all. He said I need to study this and now somehow they think that means you shouldn't believe Doctor Goodchile. He studied all the code and he was the one who explained to you that this is how it works.

Then they showed him another document about Google Earth. And they said well, doesn't this document say course define? But they didn't show him the rest of that document. If you actually look at the rest of that document and this is Plaintiff's exhibit 75, it actually says, explicitly avoid rendering nodes less than quarter quality. Avoid rendering nodes. Skip them. That's the -- that was their aha moment with Doctor Goodchild. Doctor Castleman was actually asked on direct about this process and he admitted that Google

Earth does not go through this process of requesting and representing and displaying every node. And this was on direct testimony from his own attorney. Question, what are these comments, testimony about what call children is doing? Answer, it says there is no need to call the children if we don't compare Lod metrics and that was level of detail. That means -- what that means is there is no need to download the images in those child nodes if they don't meet the level of detail criteria. There's no need to download those child nodes if they don't meet the level of detail criteria. That's the difference.

In Google Earth they use a smarter system that picks and chooses and it does not request each of the subsections and that's why it does not infringe. Doctor Goodchild put them side by side and said if you look at these two, they are very different. Here's what the patent describes, here's what Google Earth does and those are two different things. And when Doctor Goodchild was done testifying, what evidence did ACI put on to tell you that he was wrong? Did

they bring Doctor Castleman back and say nope, Doctor Goodchild made a mistake. That is not how Google Earth works. Mr. Birch is wrong, that is not how Google Earth works. Let me show you some more source code fragments. No, there wasn't any evidence.

Now, let me turn to the next reason why Google Earth doesn't infringe. And that's because it does not do Step F. In other words, it doesn't repeat -- it doesn't do Step G, it doesn't repeat Step F. The Court has actually told you, given you some constructions that are important to this that help understand the requirements and the relationship between Step F and Step G. In Claim 1, Step F, the substep of dividing must be performed before the substep of requesting. So you have to divide and then you can send the request out. And Step F must be performed before Step G. And so Step F has four subparts. You have the dividing step, where the image is broken into pieces, whether it's two or four or eight or something else. And then it has to be requested and then it has to be stored and represented. Step G

says, now you have to repeat that. And you can do that over and over until the image is at the desired level of resolution. And because this is a pretty complicated image, it actually takes a little while to get to the end of it. But at the very end what you've done is traversed through each one of those nodes and you have to divide, then you have to request, then you have to store and display and then you have to do that again, you have to repeat it.

But what does Google Earth do? It doesn't do that. It uses that process that I just described of traversing the tree first, then picking some to request, then picking some to store and display. It's a completely different process. It doesn't go through that four step process that's in Step F and then repeat it over and over again. It's doing it completely differently. Now, after that was done, and after that was demonstrated, Doctor Goodchild explained that that means that it does not perform Step G. He was asked the question, can you demonstrate how Google Earth works instead of as it relates to Step G? Yes. So we

traverse the tree and place items into the list, but there's no question here of repeating because the dividing does not lead to retrieving, storing and representing and we can proceed to further divisions without executing all of Step F. Mr. Birch explained the same thing. And he says particularly in the context of the illustration that he had given you about child nodes and parent nodes, he said can you request a child node before you've displayed the parent node, because in the claim you couldn't do that. You'd have to request it, store it and display it before you would repeat that process. And so he was asked, can you do that? And his answer was yes, absolutely, because of this process, where we're potentially or we're fetching the child nodes ahead of other nodes, then they can potentially be displayed before they are fetched, before the parent would be fetched. That is the difference. And that's a difference that Doctor Castleman didn't even consider. It's not like he showed you source code about how this works. He was asked, did you consider this issue and here is his answer.

Question, I'm just asking whether you did any analysis that would address the question of whether any nodes get ignored after the data has been requested for them? Answer, I don't recall specifically looking at that question. Then he was asked about the specific question of infringement related to Step G. Wouldn't you agree with me that if Google didn't perform all the steps, the substeps of Step F of Claim 1, it could not infringe Step G, correct? Answer, I don't recall specifically looking at that question, but as we sit here today it strikes me that the answer to your question is yes.

Now, Doctor Goodchild and Mr. Birch came and explained how Google Earth works. And they explained how it doesn't do this repeating step in Step G. And they brought Doctor Castleman back. And they asked him one question. They didn't ask him about Step G, they didn't ask him whether the description of Google Earth was wrong. They didn't ask him about whether the description of the patent was wrong. They didn't ask him. They didn't put on any evidence at all related to this issue once

we heard the descriptions of how the claim really works and how the patent and how Google Earth really works. They brought him back to answer one question. It was actually a really good question. It came from one of you. Somebody asked, how can Google Earth present a smooth image if you don't perform all the substeps of F? And Doctor Goodchild was asked that question. And you know what his answer was? Well, sometimes it's not smooth. If your internet connection is fast, it will be smooth, because it's going to go to the level of detail as quickly as possible. But if your internet connection is slow, you might see some jerkiness, you might see some broken images in the middle. And ACI brought Doctor Castleman back and they asked him one question and they asked him that question. And I listened to his answer and he said almost the same thing as Doctor Goodchild. He said, you know, you don't, because you would see this jerkiness as you're waiting for the images to come back. That's exactly what Doctor Goodchild said.

Now, Doctor Castleman apparently

comes to a different conclusion. He says that we infringe, but he didn't bother to explain that. He didn't say that Doctor Goodchild was wrong in his explanation of the product. He just answered that question and then he left. They didn't recall any of the inventors to tell you that the description of the patent was wrong. What was the evidence that they put on once we had tried to explain to you, the jury, what the patent requires and how Google Earth works and how it's different? What was that evidence? There wasn't any.

Now, you're going to get a verdict form at the end of this process and it's going to have some questions on it. And this is the first question. Do you find that ACI has proven by a preponderance of the evidence that Google's use of the accused Google Earth products infringes the following claims of U.S. Patent No. RE44550? You should answer that no. And Claim 1, Google Earth does not infringe Claim 1 because it does not do all the steps of Step F and it does not repeat as required by Step G. And because Google Earth does not infringe Claim

1, you should find that it does not infringe the others either.

Now, let me turn to the next topic and that is that ACI is trying to own public methods -- ACI is trying to claim for their own something that should belong to the public. They made a big issue this morning about the PTO having looked at this patent and having looked at it three times, but you heard from the Court, patents issued by the Patent and Trademark Office are presumed to be valid, but not all patents that are issued by the PTO are, in fact, valid. That's the job for you to decide based on the evidence that's in front of you.

They've also made a big deal of telling you, well, ACI has gone back to the Patent Office and they've told the Patent Office that we're coming to you because we have this extra art. This is what they said in their opening. They said hey, we've been told there are these problems. Can you check to see if there really are? Now, I want to be fair. They did submit some more prior art. But they didn't submit everything that you've heard about during

this trial. And more importantly, or at least something you should consider, when they submitted it to the Patent Office the first time, they didn't tell the Patent Office hey, we've got this prior art, you want to look at it? Let's look at what they actually told the Patent Office was the reason they wanted to submit it.

This is from the declaration from their CEO Andreas Wiek and he says I believe the original patent to be wholly or partially inoperative or invalid for the reasons described below. Claims 1 contain errors with antecedent basis, specifically the first occurrence of several claim terms such as the term selection in subparagraph B are preceded with the rather than A. And the second occurrence concerning pictorial representation in the body of the claim in subparagraph F is preceded by the A rather than the. Rather the specification contains several translation errors from the priority German application. He didn't say we've got a bunch of other art we want you to look at. This is what he told the Patent

Office. Now, they looked at it and they reissued the patent. But when they reissued it, when they looked at it, they did not have all of the evidence that you have seen. And in particular, they did not have the testimony of Stephen Lau that you heard from that witness box. They also did not have other information about the TerraVision system. They did not have the TerraVision video. They did not have some of the documentation about the demonstrations in the Magic system. All of that was available only to you.

But of all the people that they've been unfair to in ACI, Mr. Lau has got the top of the list. What ACI's lawyer just told you is well, they talked to Mr. Lau. They had his testimony. And well, they had some testimony, but the PTO did not talk to Mr. Lau. You never heard that. They had testimony that he gave in another litigation 10 years ago in 2006. Mr. Lau came here and he talked to you directly and he answered all of their questions and he explained to you what their system was, where he demonstrated it and how it was used. And we

went through all of the documents showing that.

Now, the Court -- they've raised an issue about whether the TerraVision system that Mr. Lau and Mr. Leclerc developed was actually in public use. And the Court has given you instructions on what it means to be in public use. It says SRI's TerraVision was in public use if it was accessible to the public. To prove that SRI's TerraVision system was used publically, Google must show by clear and convincing evidence that it was accessible to the public prior to December 17th, 1995. If the SRI's TerraVision system satisfied those requirements, it qualifies as prior art.

Well, the evidence is pretty clear and convincing that it does. In fact, the only evidence you've heard is that Mr. Lau demonstrated the TerraVision system at least twice before that critical date in December of 1995. He was asked about the demonstration, the public demonstrations that he did. And he mentioned that they demonstrated it in multiple locations, including the 1994 Magic Technical Symposium and also at SIGGRAPH '95. And during

those he described how they had live demonstrations, retrieving data from across the network, across the magic network and also showing the video. Showing how that system worked and making it publically available. And when you look at those dates in August of 1994 when the Magic Symposium was shown and in August of 1995 at SIGGRAPH, that is more than one year before the date that they filed for their U.S. application. And as a result, their application is too late. That information belongs to the public. We know that we should believe, you should believe what Mr. Lau tells us. He was very firm in his recollection that he had met with at least three of the inventors while he was there. And described for you how ACI actually had their demonstration just on the other aisle. He actually told you about how he gave them the source code for his project, which most of the time you would think is a somewhat unusual thing. People are supposed to protect their source code and keep it confidential.

But Mr. Lau described for you how he and Mr. Leclerc and the entire TerraVision

project were designed to make this public, to take this information, and this knowledge about global visualization and make it public for everybody.

TerraVision was a federally funded product that was meant to be put in the public domain so people could use these algorithms in a spirit of corroboration. So they provided their source code to the people at ACI. But ACI has an unfortunate history when it comes to dealing with TerraVision and SRI. And, in fact, you heard Mr. Mayer admit that he was describing his system to Mr. Leclerc in E-mails, he was less than truthful. I asked him:

"You didn't tell Mr. Leclerc that there was an aspiration or a goal or a desire, you told him we already set it up?

"Answer: Yes, I told him that and that wasn't completely truthful.

"Question: It wasn't completely true, was it?

"Answer: No."

So when you look at the evidence that's available to you and you're asked the

question on the verdict form, did you find that Google has proven by clear and convincing evidence that SRI's TerraVision system was publicly used before December 17, 1995, you should answer that yes.

Now, then you heard Dr. Goodchild, and he compared the disclosures about the TerraVision system, what about Lau said and the information that's been made available to you about that system. He said let's compare them and see, does that disclose what is in claim 1.

There is an instruction here that's particularly important and that relates to how you understand those references. To anticipate a prior art reference does not have to use the same words as the claim, but all the of the requirements of the claim must have been present so that a person having ordinary skill in the art could make and use the claimed invention based on that knowledge.

Well, Dr. Goodchild went through and he showed you how each one of those claims is described. And what did they do on cross-examination? They came up and they wanted

to fight and spar with Dr. Goodchild whether this word was exactly the same as the word that was in the patent or whether the patent word was exactly the same as the word that was in the documents that they had about the TerraVision system.

But the instruction says the words don't have to be exactly the same. And after Dr. Goodchild was done and he had explained to you how all of these requirements are met, what was the evidence that ACI put on to say that Dr. Goodchild was wrong, to say that nope, he has misinterpreted TerraVision. SRI TerraVision does not anticipate. What was that evidence? There wasn't any.

Dr. Goodchild explained the same thing for you for the other three dependent claims and showed how they're disclosing TerraVision and as a result you should find that those are disclosed and anticipated as well.

This is going to be question number three on your verdict form. If you answered yes to question number two, do you find that Google has proven by clear and convincing

evidence that SRI's TerraVision system anticipates, that is constitutes a public use of any of the following claims of the US patent number RE 44550.

And the answer to that should be yes, because in every one of those instances, the system that Mr. Lau demonstrated in 1994 at the MAGIC conference and in 1995 at Siggraph, it is a public use of every one of those claims.

Now there is a further question related to this because this has to be broken in subparts. His Honor described for you when you're dealing with invalidity, you got anticipation or public use, and you also have obviousness.

If you answer no to question three, if you don't think that it's anticipated, then you get another question. And this question is going to ask you about obviousness. Do you find that Google has proven by clear and convincing evidence that any of the following claims of US patent number RE44550 are invalid as obvious based on SRI's TerraVision system and the knowledge of a person of ordinary skill in

the art at the time of the alleged invention?

You should answer those questions yes, if you get to this question. If you think for some reason the differences in the words are important enough that it's still not the same concept as described by Dr. Goodchild, it's still rendered obvious and you should answer yes for Google.

Let me turn to the other piece of prior art. And that's the T_Vision System.

Did you hear ACI's lawyer talk about this publication at all? You heard Dr. Goodchild, you heard Dr. Goodchild on the stand, and he explained how this system and you -- I'm sorry, how this paper renders invalid their claim. But you didn't hear any evidence at all from ACI, you didn't even hear any argument from ACI about how that's not true. Just like the TerraVision system, they got a number of disputes about this T_Vision paper. First they say it wasn't demonstrated, it wasn't distributed to anybody. We went through with Mr. Lau on the stand to show that it was on the CD-ROM. We actually put the CD-ROM into the

computer. It was read into the computer. He looked at the screen and clicked on the location for the T_Vision paper and up it came, looking I think pretty much identical to this. That CD-ROM was distributed at Siggraph 95 in August, and that was more than a year, several months more than a year before ACI filed its US application. Under the law that the Court has given you, that means that their patent is invalid. It was simply too late.

You're going to get a couple of different questions related to this T_Vision paper. The first of those questions is whether it's a printed publication. And the Court has instructed you that it's a printed publication only if it was accessible to the public prior to December 17, 1995.

Well, we know that it was. The evidence, the only evidence that's available to you is that it was. You heard from Bernard Rous, he's the director of publications for the Association of Computing Machinery. They're the organization that runs Siggraph 95. And he came by videotape, but you did get to hear his

testimony. And he explained to you the whole process of how these CD-ROMs work. He was asked:

"Were any materials given to attendees of Siggraph 95?

"Answer: Yes. Generally speaking the attendees are given the CD-ROMs that are produced as hard copy."

Mr. Rous told you he didn't know specifically whether that happened at Siggraph 95, but this is the way it normally works. You also got some evidence about whether it actually happened at Siggraph 95. Mr. Lau was asked that question, because he was there, and there is no doubt that he was at Siggraph 95.

"Question: Were you given any materials as part of your attendance at that conference?

"Answer: Yes, all the attendees received a printed proceeding from the conference itself and also a CD-ROM containing electronic versions from the conference itself."

What was ACI's evidence that those CD-ROMs were not distributed? Did they come in,

did they have anybody testify that that didn't happen, that they didn't show up? What was that evidence?

There wasn't any. So you're going to get this question number five on your verdict form. Do you find that Google has proven by clear and convincing evidence that the T_Vision paper was a printed publication before December 17th, 1995? And you should answer that yes.

And you're going to get a similar question about the contents of that T_Vision paper. Dr. Goodchild looked at that paper and went through each one of these elements and he showed you in the paper where each one of these elements is found and he checked them off one at a time.

And when he was done, he had finished testifying, what was the evidence that ACI put on to say nope, that's wrong. You have read that paper incorrectly, that's not what it said.

Did they have Dr. Castleman come and tell you that Dr. Goodchild was mistaken? No.

Did they have one of the inventors and authors of this paper come in and tell you that Dr. Goodchild was mistaken? No.

What was that evidence that ACI wants you to believe shows that somehow Dr. Goodchild was wrong and that the T_Vision paper does not anticipate or render obvious these claims? There wasn't any.

Dr. Goodchild went through the same process for claims 14 and 28, and because of that, because of that evidence, you should find that the T_Vision paper anticipates these three claims, 1, 14 and 28 of the patent. This is question number six on your verdict form. If you answered yes to question number five which is the one about whether it's a printed publication, do you find that Google has proven by clear and convincing evidence that the T_Vision paper system anticipates any of the following claims? And you should answer yes for each of those.

Dr. Goodchild admitted that when it came to claim 3, that changing of the coordinate system, he had the T_Vision paper

does not explicitly disclose that. So what did he do? He said you have to look at what someone of ordinary skill in the art would understand, and you have to look at what other information was available. And he said there is another paper that describes that very process. And that's that global mapping patent that I showed you that describes flying at the beginning of my presentation this morning.

This is that. He pointed out to you that it includes and describes presenting mapping data in a collected or compensated projection format departing from said Mercado projection. In other words, if you started with the Mercado projection, then you present it in a different, a corrected or compensated projection. If you put those two together like a person of ordinary skill in the art would, that renders obvious this claim.

So you're going to get a specific question on your verdict form related to claim number 3 with the T_Vision paper in combination with the global mapping patent and someone of ordinary skill in the art, and based on that,

based on all the evidence that you have, you should answer that question yes.

Now, I need to turn for a few minutes and talk about determining a reasonable royalty. I really don't like to talk about this subject. This is the last question that you're going to get on your verdict form. And the reason I don't like to talk about this subject is I don't believe that you need to consider this issue.

What the Court told you is that you only need to -- you only reach the damages question if you find that Google's products infringe at least one claim that has not been proven invalid.

And I believe that the evidence is very, very strong. It exceeds the burden of proof, the preponderance of the evidence that the patent does not infringe by Google Earth. And I believe that the evidence is more than clear and convincing that those claims are invalid. But if you disagree, then we had Mr. Reed come and explain to you the process that you ought to go through in the context of

the instructions that the Court has provided.

And what did the Court tell you? That you have to put this in the context of what these parties would have agreed to in June of 2005. A reasonable royalty is the amount of royalty payment that a patentholder and the infringer would have agreed to in a hypothetical negotiation taking place at a time just before when the infringement first began. In this case, the hypothetical negotiation would have occurred in June 2005, when Google Earth was introduced.

Well, what is the best evidence of what the parties would have agreed to in a hypothetical negotiation in June of 2005. Maybe it's what they were actually talking to each other. ACI's lawyer put up a list of those communications, he didn't show you the detail, he said you seen them enough, they're hard to read, we don't want to talk about it.

Instead, he said what you ought to pay attention to an e-mail that Mr. Mayer sent four years later in 2010. He said that's a better description of what the parties would

have agreed to in June 2005. That doesn't make any sense. If you want to understand what the parties thought at the time, look at what the parties said to each other at the time.

And that's what the Court has told you you should do. In considering this hypothetical negotiation, you should focus on what the expectations of the patentholder and the infringer would have been had they entered into an agreement at that time, and had they acted reasonably in their negotiations.

Well, Mr. Reed went through the process of all of the Georgia-Pacific factors he called them, the list of 13 or 14 or 15 factors, and he explained to you what all of that would mean in the context of a hypothetical negotiation in June 2005. He looked at all of those factors and he summarized it this way. What was the evidence that he showed you about the lump sum payment that he said these parties would have agreed to in June 2005?

One of the things he looked at was comparable licenses. He said I found a license that I believe is economically comparable,

Dr. Goodchild found that it was technologically comparable. It actually licenses more patents. But Google only paid $600,000 for it. $600,000.

Now, he said it probably would have been moved up a little bit, therefore he thought it was consistent with his opinion of no more than $3 million. There was another aspect of Google's licenses that he found particularly important, and that is that Google always enters into lump sum agreements. He reviewed evidence about more than 100 agreements, every single one of them was a lump sum agreement.

And there was a very good reason for that. And it relates specifically to the kinds of things ACI wants you to believe now. He had a big part of the reason for that, is because it gives them the freedom to operate. Google can decide what it wants to do with that technology. It can use it a little bit. It can use it a lot. If it uses it a little bit or a lot, it doesn't have to keep track of every time it uses it. It can make those decisions in the future because it doesn't know what it's going to do with it them. Google always enters into

these lump sum agreements. And that's very different from the kind of agreement that they want you to agree to. They want to suggest that in 2005 the parties would have agreed to some kind of running royalty that was paid for each session of somebody using Google Earth.

What were the other things that he looked at? He said well, look at the contributions that Google makes to these products, the millions and millions of dollars that Google spends to buy data centers and all of the information that stores them, all of the money that is spent on the engineers who have spent years and years of their lives working on this product.

He also said look at the difficulties in monetizing Google Earth. And this was a very important factor. You heard from Mr. Birch about the issues that Google has had with Google Earth. It is an enormously popular product, and it's really cool, but it doesn't make a ton of money. The revenue has been flat.

ACI kind of wants to mislead you a

little bit here, because they said look, when it was introduced, there was Google Free so all of a sudden it as zero dollars. That's not what Mr. Birch said and that's not what Mr. Reed said. They looked at the Google financial records and they said there are these versions that Google charged for, Pro and Enterprise. Before Google started making those free, how much did Google get? It was just a little under $250 million over the course of all those years. That's real revenue. That's real money. That's not profit, but that was real money. But it was flat during the entire time, despite all of their effort they couldn't grow it.

You also heard evidence about their efforts to try to make ads through Google Earth. And even though the licensing revenue sounds kind of big, $250 million is a lot of revenue, but the ad revenue was much, much smaller, $5.6 million is what Mr. Birch said is the total amount that they have spent.

Put it in the relevant period, it's even less than that, so they stopped including ads.

Now Google has taken the entire product and moved it into Geo for good so all of the versions are free. You have to consider that factor of difficulty in monetizing it before they would distribute it.

We also looked at whether ACI had any licensing revenue. We found that they didn't. ACI has not licensed the product. They have never gotten any money for that patent. They said let's look at whether they have any competitive products. And the answer is they don't. You saw the testimony of Mr. Andreovits by video, they don't have and never had a competitive product.

Let's look at the negotiating history between the companies. And we used this timeline to show you what were the parties actually saying to each other. The very first communication before Google had told ACI that they didn't infringe, ACI said well, we'll take a one to three percent royalty on patent related revenues, and it's the midpoint of that, two percent that Mr. Reed actually uses, two percent of patent related revenues.

But then the parties continue to negotiation and it turns out they were willing to take even less. And importantly, Google, because remember, you have to consider what both of the parties would have done, Google said it would not have paid more than a million dollars for that patent even if it was ironclad.

What was the response to Mr. Reed's analysis of the lump sum royalty of $3 million? Mr. Nawrocki came and he put up this slide and he showed you this royalty base of 7.1 billion sessions, but he didn't give you a royalty rate, and he didn't give you an opinion on royalty damages.

All of this evidence about a rate and this discussion about a rate and the damages is something that their lawyers are making up. You never heard a witness come and tell you what would be a fair amount. You never heard an expert telling you what would be a fair amount. You never heard ACI tell you they were going to get some money for 7.1 billion sessions.

ACI told you you should get paid for every use of Google Earth. That's not true,

ACI doesn't get paid for every use of Google Earth. They get paid for every use of the invention. And there wasn't any use of the invention.

Once you look at all the evidence, you should find that Google Earth does not infringe claim 1, and that claim 1 and the other asserted claims are invalid.

Now, I'm going to get a chance to come back and talk to you in just a few minutes but I'm only going to be able to talk to you about invalidity. I want you to understand when I don't mention it, that doesn't mean that infringement is important. The evidence that you have shows that Google Earth operates differently. When you look at that evidence, I think you'll agree.

Thank you.

THE COURT: Thank you, Mr. Snyder.

Mr. Hawes.

MR. HAWES: Thank you, Your Honor.

So I got to see the trial made graphics again. They did a good job with those graphics. Little lines going here and there.

When you look at the graphics, it reflects exactly what the lawyer says. The lines go to the places the lawyers say the lines ought to go. Is that a surprise? They made the graphics. Of course they're going to reflect what the lawyers say.

Can I have slide 23.

But what their witnesses say was important for you in making your decision. Did they say the authoritative source was trial made graphics by the attorneys? Did they say look at all the little boxes and how they fill in when a graphics artist puts them together? That's not what they had.

Both Mr. Birch and Dr. Goodchild said the ultimate authority for you to make a decision on what Google Earth does is the source code. And that's an admission. They knew they didn't have the source code. So when they said that, they had to say that, because they know it's the source code that makes it work.

So we have Dr. Castleman get up and walk through the source code with you. You remember that? Google's attorney might tell you

he really didn't do it. You were here for Dr. Castleman walking through that source code with you, I'm sure you remember it. He went through every step. He showed you the files, the modules and the comments of engineers of Google, the engineers who didn't come here to speak with you, the comments of those engineers talking about how every step was done.

When you weigh the infringement decision in the case, there shouldn't be a question of whether the authoritative source that witnesses agree outweighs trial made graphics. You should go with the source code.

Now, we also heard a little bit about how well, Stephen Lau was there, there was TerraVision. Stephen Lau was there, you heard everyone say, he was at Siggraph 95. No problem, he was there.

TerraVision had a booth. That's true. But the issue is what was the TerraVision that was on display. And we know that if they had actually brought, shown us the source code or at least talked about the source code and what it showed. And they both had it, and they

didn't show it to you. They didn't even explain it or talk about what it showed. Instead they take these papers over a year-and-a-half, and they say, well, it's kind of all these papers. We showed when we questioned Dr. Goodchild and Mr. Lau that the papers didn't agree, so how do you know what was at this booth at Siggraph 95 when the papers don't agree, when Mr. Lau and Dr. Goodchild had the code and didn't bring it here for you, how do we know. How do we know that's clear and convincing evidence that allows us to second guess a patent that was triple checked.

We heard that the patent office didn't get to hear Mr. Lau on the stand. That's true. That just happened yesterday, obviously the patent office didn't get to see that. But when I put up the patent, and I think it's slide number five, let's see if I am close on that. No, back one. There we go.

That last one, that's a deposition of Stephen Lau talking about TerraVision. Now, maybe his story has changed, I can't say. But the patent office certainly can did get to see

what Stephen Lau had to say about TerraVision when they granted this patent. They saw it right there, right below where they got to see what the CD-ROM for Siggraph 95, when they got to see the article about the TerraVision product and all the SRI stuff, they got to see that, that's what was checked by the patent office when they were doing their checks.

Keep that in mind when you're deciding whether there was clear and convincing evidence with what Mr. Lau says now compared to what he said then.

We still haven't heard about the 2006 strategy document. Can we get the front page of the 2006 strategy document. I think it's about four or five ahead. Couple more. Got to get past the zero dollars. Three or four more.

You know the 2006 strategy document, I have talked to you about it before. We still at this point in the case, at the end of the case, even with our closing argument out of the way, they won't discuss their internal strategy. They won't tell you about what Google

really thought about the value of Google Earth. They just won't talk about it.

I know it's confidential, and I'm not going to turn the page so I have to go flip the paper. But you have seen it. You have seen how they use users and how that was in their words their overarching investment focus, that was the reason they invest was for users and usage.

Mr. Reed wants you to ignore that. He wants you to do something else on reasonable royalty. Why won't they talk about their internal strategy documents, their financial support code. Because it supports a royalty on the use. That's way. It says they would invest based on usage, so they don't want to talk about it, they just ignore.

You don't have to ignore it. The Judge has told you, but will give you the instructions again with how to determine damages and you can take it into account in deciding what the proper reasonable royalty is for the use made of the invention.

Could we get slide 62, please.

There it is. That's the investment focus. It has not been discussed once by Google. That doesn't mean that you can ignore it, because it's the only Google internal document in the case that tells you how Google would have decided this, if they had been a willing licensor.

You heard him say in 2006, Google wasn't offering anything. Google was saying it's nice to have patent. Remember, both experts agreed, you have to assume the patent is valid. You have to assume it's infringed. You have to assume it's that terrifying situation Mr. Jones described for you, when you realized you're using someone else's patent for this product that you expect to sell millions and billions.

In fact, I used the word sell, not correct, Google Earth for free, but that's Google's choice, not ACI's choice. ACI didn't say go use our invention and give it away for free. They didn't have that option, that was Google's choice. Because of the way the Google model works, Google knew they would be more

profitable by bringing in their users, it's in their own documents and Google refuses, refuses to talk about it.

Let's talk a little bit about the T_Vision paper. Now, you saw Mr. Lau hold up a CD-ROM. He did, he pulled up the CD-ROM, that's true. Their testimony from the inventors is they don't remember that being distributed at the conference, that was given to the patent office. There is not evidence sufficient for you to find by clear and convincing evidence that the patent office got it wrong. There is a disagreement about that and there is no clear and convincing evidence, you saw the witness, he put up there, and Google's lawyer had to admit, the witness said generally speaking, he was talking about twenty years, he said well, most of the time, you also heard other witnesses say some years they didn't get it out to attendees, and no witness, except Mr. Lau who is being paid by Google at $450 an hour said I got the materials.

You know what he actually testified. It was kind of interesting. He said

all attendees got the materials, as though Mr. Lau hung out at the registration desk and watched and made sure. It was kind of odd. He didn't say I got them, he claimed that all attendees got them, something he couldn't possibly have known. That's his testimony, and obviously you can consider it.

You can also consider the testimony of the other witnesses who didn't remember getting it and the fact that Mr. Lau is being paid $450 an hour when he said it.

What about the T_Vision papers. Can we go to the rebuttal slide, please. The big issue here is that Dr. Goodchild wants to simplify things. Do you remember that? He wants to say well, I'm going to read things in. If you read the instructions carefully, that you cannot do -- you can't read things into the publication. You can't say well, I think people would understand. You've got to show where it is.

And if you remember, if we go forward a slide, he said -- actually let's go forward three to his chapter book, maybe one

more, we'll get there. There it is.

You'll remember years after what he now says was this disclosing paper that said the whole thing, he said that previous generations of developers have seen insuperable challenges, and he included the very challenges in the '550 patent, feeding vast amounts of data through comparatively limited internet pipes. Remember the discussion in the patent, that's why you subdivide, that's why you have the repetitive step because you can't get enough data to go through and do the whole thing at once.

These challenges are still there years later. He's now telling you these were all solved by the paper on the Siggraph conference CD. It doesn't make any sense. It's not clear and convincing evidence for you to second guess the patent office to say no, this patent is still good, we have looked at that, still good patent.

They have to show by clear and convincing evidence if they want to you second guess the patent office and they haven't shown

that.

I ask you to be careful with your verdict. Look at the instructions carefully and make a good decision for this dispute which is in your hands at this point.

Thank you.

THE COURT: Thank you, Mr. Hawes.

Mr. Snyder.

MR. SNYDER: Thank you, Your Honor.

ACI wants you to just defer to the Patent and Trademark Office. The Patent and Trademark Office looked at it, they issued this patent and so you shouldn't pay any more attention to it, you should just go along. But the Judge has instructed you -- the Court has instructed you and the law is that the patent is presumed valid, but not all patents are valid. That's why you're here. And that's why we presented evidence. That's why we showed you the documents and that is why we brought the witnesses so that you could hear them.

And after Doctor Goodchild explained how the T_Vision system and that paper shows each and

every one of those elements, what was the evidence that ACI put on? Did they bring back Doctor Castleman and say, Doctor Goodchild is mistaken, that is not what the patent says or the paper says? No. Did they bring back one of the inventors? Two of them had testified. Did they bring one of or both of them back and have them say -- and remember their authors of the paper. Did they say nope, he misunderstands the paper, that is not how it works, that's not what we meant, that is not what it says? No. What was the evidence that they asked you to rely on to contradict Doctor Goodchild's conclusions? There isn't any.

It's even thinner when we get to the TerraVision system. Mr. Lau came and explained to you his project. He came to you and explained his and Mr. Leclerc's work and said this is how it works and it's accurately described in these various papers. This was the system that we put on public display in 1994 and 1995. If they wanted to ask him about the source code, they could have done it. He was right there. He said he wrote 80 or 90 percent

of it. Doctor Goodchild came and he said if you look at what they did and how it's described, it invalidates these claims. And after Mr. Lau testified and after Doctor Goodchild testified, what is the evidence that ACI wants you to rely on to contradict them? There isn't any. They didn't have Doctor Castleman come back and say that Mr. Lau's mistaken. They didn't have Doctor Castleman come back and say Doctor Goodchild's got it wrong. They just want to argue to you and they want to tell you just trust the Patent and Trademark Office. Don't do your job.

Your job is to look at the evidence independently. I have great confidence that you're going to do your job and look at the evidence. And when you look at all of the evidence, you will come to the conclusion that Google Earth does something different than is described by the patent. It does not infringe. And when you look at the evidence, you will conclude that the claim 1, 3, 14 and 28 are invalid as anticipated or obvious. We've been telling ACI for 10 years that Google does not

infringe this patent and that it has problems. And now we've given you that evidence and we hope that you will agree with us based on your review of that evidence. Thank you very much.

THE COURT: Thank you, Mr. Snyder. Now, I'm going to give you some final instructions, members of the jury and you will go back to the jury room and select your foreman and deliberate on a verdict. And when you get back there, you will find there was a verdict form and there's a copy of the instructions for each one of you.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as I have given it to you and reach a just verdict regardless of the consequences.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of

you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are the judges of the facts. Your only interest is to seek the truth from the evidence in the case. You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations stand equal before the law and are to be treated as equals.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence.

Select your foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the Court has given you regarding your conduct during the trial. After you have reached your unanimous verdict, your foreperson is to fill in on the verdict form your answers to the questions. Do not reveal your answers until such time as you are discharged unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any questions.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on your notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

During your deliberations, you

must not communicate with or provide any information to anyone by any means about this case. Except to the extent I instruct you that you may review certain exhibits on a computer provided to you, you may not use any electronic device, or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry, or computer, the internet, any internet service, any text or instant messages service, any internet chatroom, blog or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

If you want to communicate with me at any time, please give a written message or question to the bailiff, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into

the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

Any exhibits used in the trial will be available to you during your deliberations. A typewritten copy of the testimony will not be available for your use during the deliberations, although you can request a particular portion of a witness's testimony to be read back to you. It is difficult and time consuming for the reporter to read back lengthy portions of the testimony, so the opportunity to have testimony read back is quite limited. After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise. You may now retire to the jury room to deliberate.

THE COURT: Be seated please. We have to swear the security officer.

(Court officer sworn.)

THE COURT: Thank you. All right. Now, I suggest that we recess for lunch for one

hour and then again -- begin the bench trial at 1:30. Is there anything else that counsel has?

MR. PARTRIDGE: Yes, Your Honor. We had a conversation about the bench trial and we've agreed we'll avoid repetitive testimony from the jury trial this week and therefore we think the bench trial should take an hour and a half or so. It's hard to predict it exactly. And our preference would be to start at 2, if that would be acceptable to Your Honor.

THE COURT: That would be fine.

MS. WILLIAMSON: And as part of that process, Your Honor, even though there is some new evidence that has been designated from depositions, we don't intend to play or read that, we simply will submit it to the Court for its consideration.

THE COURT: That's fine.

MR. PARTRIDGE: Thank you.

THE COURT: We'll resume at 2 o'clock. Hold on just one moment. I want to talk to my clerk hear. I just want to say one other thing before we break, and that is that I think this case has been very professionally

tried on both sides and I think it's an admirable example of lawyering and whatever way the verdict comes out, I appreciate what all of you have done and you should feel as though you've performed admirably for the profession and I appreciate it.

MR. HAWES: Thank you.

MR. SNYDER: Thank you, Your Honor.

THE COURT: All right. We'll recess until 2 o'clock then.

(Luncheon recess.)

THE COURT: Be seated please. As you know the jury has reached a /SRERT /EUBGT. Is there anything we need to discuss before we bring the jury back.

MR. PARTRIDGE: Nothing from the Plaintiff, Your Honor.

MR. SNYDER: Nothing from Google, Your Honor.

THE COURT: Thank you.

(Jury enters.)

THE COURT: And who is the foreperson for the jury?

FOREPERSON: I am.

THE COURT: Has the jury reached a verdict in this case?

FOREPERSON: We have, Your Honor.

THE COURT: Would you please hand the verdict to the court deputy. I will now read the verdict. The first question is do you find that ACI has proven by a preponderance of the evidence that Google's use of the accused Google Earth products infringes the following claims of U.S. Patent No. RE44550? Claim 1, no. Claim 3, no. Claim 14, no. Claim 28, no.

Question 2. Do you find that Google has proven by clear and convincing evidence that SRI's TerraVision system was publically used before December 17, 1995? Answer, yes.

Question #3. If you answered yes to Question #2, do you find that Google has proven by clear and convincing evidence that SRI TerraVision anticipates, that is constitutes the public use of any of the following claims of U.S. Patent No. RE44550? Claim 1, yes. Claim 3, yes. Claim 14, yes. Claim 28, yes.

Question #4. If you answered yes to Question #2 and no to Question #3 -- and since the jury answered yes to both questions, it did not answer Question #4.

Question #5. Do you find that Google has proven by clear and convincing evidence that the T_Vision paper was a printed publication before December 17th, 1995? Answer, yes.

Question #6. If you answered yes to Question #5, do you find that Google has proven by clear and convincing evidence that the T_Vision paper anticipates any of the following claims of U.S. Patent No. RE44550: Claim 1, yes. Claim 14, yes. Claim 28, yes.

And then Question #7 is not answered.

Question #8, if you answered yes to Question #5, do you find that Google has proven by clear and convincing evidence that Claim 3 of U.S. Patent No. RE44550 is invalid as obvious in view of the combination of the T_Vision paper, the Global Mapping patent and the knowledge of a person of ordinary skill in

the art at the time of the alleged invention? Answer, yes.

And Question 9 is not answered as being inapplicable.

Signed May 27th, 2016. Foreperson Michael Brothers.

Is there any request to poll the jury?

MR. PARTRIDGE: No, Your Honor.

THE COURT: Now, members of the jury, by general practice of the Court and the rules of the Court, I'm not permitted to comment on your verdict, but I am allowed to comment on your service. And I want to congratulate you on having worked very hard and attentively and having put in great effort and serious mindedness into this project. The parties thank you. The Court thanks you and I congratulate you for your service. It's another demonstration that the founding fathers had a good idea when they put their trust in the common sense of the American jury and I thank you for participating in this with us. Now I'm going to allow you to go back to the jury room.

If you wait just a few minutes, I will come in and eventually discharge you and then you'll be free to go. Thank you again for your service. I'll see you in a few minutes.

(Jury exits.)

THE COURT: Be seated, please. Thank you all again. Eventually I will enter judgment on the verdict. I'm not sure, in light of the bench trial, whether that's appropriate to do now. The parties may or may not have a view about that. And then of course once I do enter a judgment, there will be a 28-day period for post trial motions and I'd be willing to extend that, but the time won't begin to run until I enter a judgment.

So now I'm going to go and meet with the jury for a few minutes and then we have the bench trial. Mr. Snyder?

MR. SNYDER: Your Honor, the subject matter of the bench trial are affirmative defenses only, and I believe that they are moot in light of the jury's verdict.

MR. PARTRIDGE: That's correct, Your Honor.

THE COURT: Okay. So we will, what, dismiss the claims of laches and inequitable conduct on the grounds of mootness, is that what you'd like me to do?

MR. SNYDER: They are not claims, they are affirmative defenses.

THE COURT: Affirmative defenses, so we don't have to dismiss any claims. We'll treat those as moot and that will put me in a position, then, to enter judgment on the verdict, which I will do.

Is there anything else that we need to accomplish today?

MR. PARTRIDGE: Nothing from the Plaintiff, Your Honor. Thank you for your work on this case. We appreciate it.

THE COURT: Thank you.

MR. SNYDER: Nothing from Google, Your Honor.

THE COURT: And again, I thank all counsel. I thank our court reporters and the court staff. You've been enormously helpful and I very much appreciate it. And it's been a pleasure for me to be able to participate in

this. So with that, I think we're adjourned.

Thank you.

(Court recessed at 2:35 p.m.)

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Dale C. Hawkins, Registered Merit Reporter, Certified Shorthand Reporter, and Notary Public, do hereby certify that the foregoing record, Pages 1373 to 1567 inclusive, is a true and accurate transcript of my stenographic notes taken on May 27, 2016, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of May 2016, at Wilmington.

/s/ Dale C. Hawkins

Dale C. Hawkins, RMR